The Commonwealth of Massachusetts
BUREAU OF STATISTICS
CHARLES F. GETTEMY, Director

LABOR BULLETIN No. 117
(Being Part V of the Annual Report on the Statistics of Labor for 1916)

LABOR INJUNCTIONS IN MASSACHUSETTS

With Compilation of Statutes Relating to Labor Disputes

(SUPPLEMENTARY TO LABOR BULLETINS NOS. 70 AND 78)

NOVEMBER 1, 1916

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ORGANIZATION AND FUNCTIONS OF THE MASSACHUSETTS BUREAU OF STATISTICS

Rooms 250-254 State House, Boston

The Bureau is organized into five permanent divisions: 1. The *Administration Division*, charged with duties supervisory in relation to the several divisions; 2. The *Labor Division*, engaged in the collection and tabulation of statistical and other information relating to matters affecting labor and the condition of the working people, as well as questions of general economic and social interest; 3. The *Manufactures Division*, which collects and tabulates Statistics of Manufactures; 4. The *Municipal Division*, which collects and tabulates Statistics of Municipal Finances, audits municipal accounts and installs accounting systems in cities and towns, and supervises the issuance of town notes; 5. The *Free Employment Offices Division*, embracing the administration of the State Free Employment Offices, of which there are four, located respectively at 8 Kneeland Street, Boston; 47 Water Street, Springfield; 182 Bank Street, Fall River; and 48-52 Green Street, Worcester. During the period of taking and compiling the Census a sixth division, the *Census Division*, is organized.

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Labor Injunctions in Massachusetts.

GENERAL INTRODUCTION.

This bulletin, which in a sense is supplementary to Labor Bulletins Nos. 70 and 78, issued in 1909 and 1910 respectively, has been prepared with a view to presenting a survey of litigation in labor disputes in this Commonwealth during recent years, including all cases arising in the Superior Court and Supreme Court (Single Justice) in Equity, from November 1, 1910, to February 1, 1916, and a complete list of the cases decided by the Supreme Court for the Commonwealth beginning with *Commonwealth* v. *Hunt* and including the recent decision of *Bogni* v. *Perotti,* amounting in all to 34 cases. The later cases have been given in full, except certain portions of the headnotes and of the text of the decisions which are not of any great importance to the layman as an aid to his understanding of the several cases. Although the title of the bulletin is "Labor Injunctions in Massachusetts" it will be observed that certain cases which did not arise in equity, but have been decided at common law, have been included. These, however, have been added in order to make the list complete from the point of view of the substantive law, the name being justified on the ground that most of the cases have arisen in the courts of equity.

Part I consists of certain explanatory matter relative to the Equity Court from its beginning in England, with the hearing of petitions by the Chancellor, down to the present proceedings, as they are understood to take place in the equity courts of the Commonwealth, and it is hoped that this discussion will serve as an aid to the layman in appreciating the significance of the cases, especially where he may not be familiar with the procedure in such cases.

Part II consists of the complete list of cases, as found in the Massachusetts reports, from the first case in 1842 up to the present time, and are arranged chronologically in order that the historical development of the law may be observed.

In Part III have been presented certain typical forms of the principal papers necessary in the carrying of a case through the courts of equity, from the bringing of the bill to the entering of the final decree. Such

forms have been referred to from time to time throughout the book for the purpose of making the text more intelligible.

In Part IV appear those cases relating to labor disputes arising in the Supreme and Superior Courts of Equity in the Commonwealth from November 1, 1910, to February 1, 1916, arranged in chronological order for each county; and in Part V those cases in which contempt proceedings were instituted are presented.

Newspaper clippings relating to injunctions and court decisions in such cases have been collected by this Bureau and were useful in preparing a list of cases. A careful examination was made at the courts of each county of the docket and actual papers relating to labor disputes in order to complete the list. The papers on file were reviewed and the actual pleadings and findings in each particular case are briefly summarized in this report. It is believed, therefore, that every case in which an injunction has been sought in a labor dispute in Massachusetts between the periods above mentioned has been consulted in the preparation of this report. In the 110 petitions which were addressed to the court in these matters, 34 injunctions were granted; in two cases injunctions were denied; 15 cases were ended without injunctions being granted; in 35 cases there were no proceedings after the bill of complaint or master's report had been filed; in the remaining 24 cases final decrees were entered by the parties by consent, signifying that the parties had arrived at an amicable agreement. Although the number of petitions filed during recent years appears to indicate a disposition by parties to labor disputes to resort to the courts more frequently than formerly, there is nevertheless shown by the cases a growing disposition to settle such disputes amicably before injunctions are actually issued. In a large proportion of the cases the final decrees signify nothing other than that a stipulation has been filed in which the parties have agreed to settle the matter upon terms which are not made public; and in several other cases joint stipulations are found in which respondents agree not to do any of the acts complained of, thereby preventing the issuance of any *Temporary* or *Ad Interim* Injunction.

Certain statutes bearing on industrial disputes, enacted by the Legislature during recent years, have been added as Appendix C. In general it may be said that these statutes cover the most vital points of differences between employers and the unions. By Acts, 1886, Chapter 263, and its amendments, the arbitration of labor disputes was recognized as in accordance with sound public policy. The State Board of Conciliation and Arbitration, as the administrative board at the head of such work, and local

boards of arbitration, appointed as occasions arise, have original jurisdiction in such cases. Advertising for employees during strikes has been regulated, so that employers when advertising for strikebreakers must mention in such advertisement, or oral or written solicitations, that a strike, lockout, or other labor disturbance exists among their employees. Under this act provision is made for the determination of the "normality of business" after the strike has presumably ended. By Acts, 1875, Chapter 211, Section 2, it was provided that no person shall, by intimidation or force, prevent or seek to prevent a person from entering into or continuing in the employment of any person or corporation, and by Acts, 1913, Chapter 690, it was further provided that "peaceful picketing" and attempts to persuade, by printing or otherwise, any persons "to pursue any line of conduct not unlawful or actionable or in violation of any marital or other legal duty" would be permitted. Other provisions relative to the employment of special police officers by employers and police protection generally need not be mentioned specifically here. But one of the most important statutes affecting the issuance by courts of equity of injunctions is to be found in Acts, 1914, Chapter 778. This statute provided, in brief, that no restraining order or injunction should be granted by any court or judge in the Commonwealth "unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application, for which there is no adequate remedy at law . . ." and that in "construing this act, the right to enter into the relation of employer and employee, to change that relation, and to assume and create a new relation for employer and employee, and to perform and carry on business in such relation with any person in any place, or to do work and labor as an employee, shall be held and construed to be a personal and not a property right." Upon appeal to the Supreme Court of the Commonwealth in a very recent case (*Bogni* v. *Perotti*), see *post*, page 185, the court found this statute to be unconstitutional, thus restoring to employers as well as to employees the previous status of the law on these matters, as found in court decisions.

The material presented in this report was compiled by Mr. Frederick J. deSloovere of the Boston bar, who for some time was connected with this Bureau in the capacity of Legal Assistant in the Labor Division.

I.

THE COURT OF EQUITY: ITS ORIGIN AND JURISDICTION.

1. INTRODUCTORY.

When conditions arise in the course of a strike which demand or afford opportunity for recourse to the courts, it is nearly always to the equity courts that application is made. What is asked in nearly all cases is the issue of injunction forbidding the doing of certain acts, as, for example, "picketing." The peculiarities of proceedings in courts of equity make them even less familiar to those who are not trained in the law than the ordinary or common law courts in which accident cases, for example, are tried. It seems wise therefore, by way of introduction, to state briefly the nature of courts of equity and the methods of procedure therein.

The Origin of the Court of Equity.

After the courts of common law had become pretty well established, it was seen that the system therein administered did not suffice completely to protect the people from injustice and oppression. In many instances the only recourse was to address a petition to the king. In time the practice of referring such petitions to an officer, called the chancellor, led to the establishment of a recognized and formal court, for the purpose of dealing with these matters. It was called, from the chancellor, the Court of Chancery. Its business was to administer that branch of the law which came to be known to lawyers as "equity." It was entirely independent of the courts of common law in its organization and differed widely in its way of doing business. In matters of principle, however, it was usually, though not always, in substantial harmony with the common law courts, taking to itself certain peculiar classes of cases wherein those courts, on account of their rigid rules and limited form of relief, were unable to prevent injustice. This defect of the common law courts was especially marked where an injury of serious nature was threatened, but none actually had yet been done. Before such a contingency the court of common law was helpless, its only power being to award money damages after the injury had been done, a most unsatisfactory situation. By reason of its origin the court of chancery had a certain flexibility of proceeding and of method of relief which gave it the power to meet emergencies of the kind referred to. But notwithstanding the circumstances which led to its establishment, there came in time to be built up for the court of chancery a set of rules or precedents for the control of its action within its special field which a judge could not disregard without violating his oath of office.

While under the laws of Massachusetts the same judges who pass on questions arising at common law also often preside over the court sitting as a court of equity, they are, when so presiding, as truly judges of a court of equity and governed by the established rules of equity procedure as if the separate organization of the original courts of equity had been maintained.

Equity Jurisdiction in General.

It becomes necessary therefore to inquire as to the nature of the jurisdiction of a court of equity as distinguished from that of the ordinary courts of common law, and as to the peculiarities of the relief which it grants so far as they are significant in the kind of litigation reviewed in this report. As has been suggested, a court of common law can grant relief only when an injury has been done. The successful suitor in such a court gets a judgment — a declaration that the defendant owes him a certain sum of money. He is left to collect his judgment by such other means as the law provides. No command is laid upon the defendant to pay or to do any other act. If, however, the case is one that a court of equity will treat as within its province, the court will issue a decree commanding that the defendant do such acts as justice to the plaintiff requires to be done, or to refrain from doing the acts which he is doing or threatening to do to the injury of the plaintiff. This direct action is the great characteristic of a court of equity, which, moreover, will, if need be, see that its commands are obeyed.

It is not in every sort of case however that a court of equity will thus interpose. Roughly speaking, it is only when the injured party has no remedy at common law or when that remedy — a judgment for money damages — is inadequate in that the injury is of a sort for which money damages cannot be a sufficient recompense, that a court of equity will take jurisdiction of the case.

The suitor who seeks the aid of a court of equity must therefore as a general rule show that he has been injured by the unlawful act of another and that he is without an adequate remedy at the common law. He must, however, do more than this. He must show that the cause is one of those cases which, aside from the absence of a common law remedy, have been determined to be properly within the equity jurisdiction. There are many kinds of these cases, most of which have no application to questions arising out of industrial disputes. One of the firmly established principles of equity jurisdiction is, however, of great importance in this connection, namely, the proposition that when there is interference, actual or threatened, with property or rights of a pecuniary nature, the jurisdiction of a court of equity arises. This especially is true when the unlawful interference threatened would result in injury of such a nature that not only would money damages be insufficient as compensation but the consequences, practically speaking, would be irreparable. Where it is shown to a court of equity that a person is threatening action which will result in such injury to the property or rights of the plaintiff or has commenced and threatens to continue such conduct, the court will interfere and by its writ of injunction command the threatening party to desist. Except in that it is unlawful, the character of the act done or threatened is of no importance. It may or may not be an act of itself punishable as a crime. It is the threatened unlawful interference with the rights of the plaintiff and the resulting damage which is the foundation of the jurisdiction.

The Jurisdiction in Labor Cases.

Upon the principles thus outlined rests the power of courts of equity to take cognizance of questions arising in industrial disturbances and to issue the injunctions concerning which the discussion has arisen. Complaint is made that the defendants are interfering or are threatening to interfere unlawfully with some alleged right of the plaintiff — the right, for example, to hire whom he pleases. The court hears

the matter and determines whether the alleged right is, in fact, a right of a sort to protect which it may take action. Having determined that, it proceeds to ascertain whether such right is really being interfered with, whether the means of interference is unlawful, whether the interference is likely to continue, and, continuing, to do irremediable damage. If the court finds such a state of affairs to exist it will issue an injunction commanding the persons complained of and before the court to refrain from doing the acts in question.

2. PROCEEDINGS IN EQUITY AND THE ISSUE OF INJUNCTIONS.

Such being the manner in which such matters come before a court of equity, it remains to note some of the peculiarities of the court, and to explain somewhat more in detail its proceedings and the nature and enforcement of the chief of its processes employed in labor cases, — the writ of injunction.

The Bill.

The complaint spoken of is made by filing in court what is called a *bill in equity*.[1] This is a formal statement setting forth the facts upon which the complaint is based and praying the court to make such order to the persons named as defendants as may be necessary to prevent the threatened injury or to put a stop to it if already in progress. If the court is asked to issue an injunction there must be added the oath of the complaining party that the facts set forth are true or are believed so to be.

Temporary Injunctions and Stipulations.

Upon the filing of the bill, a *subpœna* is issued from the court, which is served on the persons named as defendants. It requires them to appear at court upon a certain day and make answer to the bill. When the bill states facts which indicate that the defendants already are doing, or are threatening immediately to do, acts which are or may be unlawful and which may result in irreparable injury to the plaintiff, an *order of notice* is issued, requiring the defendants to appear in court at a very early date and show cause why a *temporary injunction*[2] (or an "*injunction pendente lite*") should not be issued restraining them from doing the acts in question until the court shall have had opportunity to hear and determine the case upon its merits. If the facts stated indicate that owing to extraordinary circumstances the damage may be done if the court waits till the defendants can be served with an order of notice and a hearing had on the question of a temporary injunction, what is called an *injunction ad interim*[3] may be issued restraining the commission of the acts in question until such hearing can be had. Such *ad interim* injunctions were issued in very few of the cases covered by this report.

Upon the return day of the *order of notice* the court hears the parties and determines whether it will order the issuance of such an injunction. Such a hearing is not final, but it is fully sufficient to enable the court to decide what the probabilities of the situation are. If it appears to be necessary in order to protect the rights of the parties during the period that must elapse before the real merits of the case

[1] For an example of a typical *bill in equity with accompanying oath*, see *post*, pp. 191–193.
[2] For an example of a *temporary injunction*, see *post*, p. 197.
[3] For an example of an *injunction ad interim*, see *post*, p. 194.

can be gone into and determined, a temporary injunction will be issued commanding the defendants named to refrain from doing the acts complained of until the court, after hearing, shall make some further order. In several of the cases noted in this report the defendants filed a *stipulation*[1] that they would not do the acts complained of pending such hearing, and in such cases no temporary injunction was issued.

The Trial of the Facts.

The service of the *subpœna* brings the defendants before the court and makes them subject to its orders. The next step is the filing by them of their *answer*[2] to the complaint. When this has been filed, and the complainant has taken issue with it by filing what is known as a replication, the case is ready for trial or for a "hearing on the merits," as it is called.

In courts of common law the facts, if either party so desires, are always determined by a jury. This right in common law cases is known as "the constitutional right of trial by jury." In courts of equity, however, the determination of the facts, as well as the law, has ever been a matter for the judge. But he may refer the case to an officer called a *master*[3] whom he specially appoints to hear the evidence, determine the facts, and make a *report*[4] of them to him that he may take such action upon them as the law requires.[5] This practice is as old as is the court and was in force long before our constitutions, Federal or State, were written; the judge, however, need not follow this course unless he so desires.

Permanent Injunctions.

Once the facts are before the court, it determines under the law what action it will take. If the plaintiff has not made out his case the bill will be dismissed, and if a temporary injunction has been issued it will be dissolved. If it appears that there has been or is threatened unlawful interference with the rights of the plaintiff and that such interference will continue, if not prevented, and result in irremediable damage, the court will order that the defendants be permanently enjoined from doing, personally or by their agents, the acts complained of. If a temporary injunction has been issued it will be continued permanently. If none is in force, a *permanent injunction*[6] will be issued. If either party is dissatisfied with the disposition of the case, an appeal may be taken in Massachusetts to the full bench of the Supreme Judicial Court for review, and this is in practically all cases final.

These are the ordinary steps in the conduct of a case which proceeds to final determination. In many instances, however, the matter is adjusted or the disturbance is over before the case has been carried to its logical legal conclusion, and it is then either dismissed by agreement or allowed to drop. In a large number of instances "strike" cases end with the issue of a temporary injunction, neither party caring to proceed further.

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[1] For such a *stipulation*, see *post*, p. 194.

[2] For an example of a typical *answer*, see *post*, p. 195.

[3] For an example of an *interlocutory decree referring a case to a master*, see *post*, p. 198.

[4] For a *master's report*, see *post*, p. 198.

[5] The case also may be referred to a master for determination of the facts as to the necessity of a temporary injunction, and this course is sometimes followed in this class of cases.

[6] For an example of a *permanent injunction*, see *post*, p. 200.

3. THE ENFORCEMENT OF THE DECREE OF THE COURT

It remains to notice the manner in which the decrees of the court are made effective and its order enforced. When an injunction, temporary or permanent, is issued it is brought to the notice of the individuals named as defendants by service of a copy of the writ upon them by an officer of the court. From the moment of such service, at least, it becomes binding upon them under penalty of punishment if it is violated by them or caused to be so violated. As to all persons not individually named in the bill of complaint and in the writ of injunction, but within its terms, it is binding from the time when such persons have knowledge of its existence and terms, and thereafter they too may be punished if they disobey the command of the court. For example, it is now customary to name in the bill certain of the officers of a given labor organization involved, "individually and as representative of the interests of the other members of the union who are made defendants but who are too numerous to be individually named."[1] If an injunction is issued it is made to run against the persons named and also against each of the other members of the union in question, their agents and servants, although not against the union itself. Service is usually made upon the individuals named and is binding upon them at least from that time. As to the other members of the union it is binding from the time when they know of the terms of the injunction. No one can be punished for violating an injunction of which he does not know. And it is very doubtful if an injunction, in this Commonwealth at least, can be issued so as to bind persons who in some proper way have not been made defendants in the bill of complaint or who have had no opportunity to have their interests looked out for before the court.

4. CONTEMPT OF COURT.

When a person upon whom an injunction is binding violates it by doing one of the acts therein forbidden by the court he is guilty of what is called *contempt of court* and is liable to summary punishment by the court whose order he has disobeyed. It is the same as if a witness were to refuse to obey the judge's direction to answer a question put to him by counsel. The only difference is that such refusal being in the presence of the court is called a *direct contempt* while the violation of an injunction usually is not in the presence of the court and is called *indirect contempt.* In cases of direct contempt the judge takes such immediate action as he sees fit, and may order the offender to pay a fine or may sentence him to imprisonment for such a time as the case seems to demand. There is no intervention of a jury. In this class of contempts no question is now raised, in this Commonwealth, as to the propriety of such summary punishment. But in the case of indirect contempts the proceeding is slightly different. The complainant in the suit in which the injunction was issued files with the court which issued it what is called a *petition for an attachment for contempt,* setting forth the existence of the injunction, the fact that the person alleged to have violated it knew of it and of its terms and was bound by it, the nature of the alleged violation, and the circumstances thereof. Thereupon an *order of notice* is issued to the person alleged to be in contempt directing him to appear and show cause why such an attachment

[1] For cases relating to this question, see Pickett *v.* Walsh, 192 Mass. 572, *post*, p. 82, and Reynolds *v.* Davis, 198 Mass. 294, *post*, p. 103.

should not be issued. This is served upon him, and if he does not appear the attachment issues. If he does appear, a hearing follows before the judge and the facts are inquired into. If the judge finds that there has been a violation of the injunction, the respondent is adjudged in contempt and ordered to pay a fine or sent to jail.

As has been stated, the acts forbidden by an injunction may or may not be a crime, and therefore the violation of an injunction may also be an act which renders the doer liable to criminal prosecution and punishment. With that, however, the court of equity has nothing to do. It is not punishing a crime nor does it concern itself whether the act is or is not a crime. Its only purpose is to compel obedience to its orders and to punish their disobedience. Usually however, the judge, in his discretion, recognizes the practical features of the situation, and in fixing sentence considers the action or probable action of any of the criminal courts in cases where the violation of the injunction happens also to be a crime.

By a recent statute,[1] however, the defendant in proceedings for violation of an injunction, where it appears in the petition filed in court alleging such violation that it is also a criminal act, is given a right to trial by jury on the issue of fact only.

[1] Acts 1911, c. 339. *See* Appendix C, p. 254.

II.

THE LAW RELATIVE TO LABOR DISPUTES.

1. INTRODUCTORY.

In Massachusetts the various legal questions involved in cases arising out of labor disputes have to be considered not only from the point of view of the actual decisions, but also in the light of such legislation as has been enacted in the past five or six years. But primarily, however, the inquirer who wishes to know what is the law applicable to a given situation must first find his answer in the decisions of the courts and by the application of principles deduced from those decisions. Only then can an intelligent application of the statute law be made. Certain statutes governing the issuance of injunctions appear in Appendix C of this bulletin (see page 253).

The most conspicuous instance of the employment of the injunction to restrain acts of labor organizations and of strikers was in the great railway strike at Chicago in 1894, and it was in the Debs' case[1] arising out of that strike that the highest judicial authority in the United States was called upon for a decision as to the use of the injunction in such circumstances.

While the decisions of all the appellate courts of the various States, the Federal courts, and of the other tribunals which administer the English law are important to us of Massachusetts in that they may influence the decision of our own courts, at least in cases which have not arisen here before, the decisions of the Supreme Judicial Court of Massachusetts only are precedents which are binding upon Massachusetts courts when confronted with similar statements of facts. These decisions, as far as they relate to the matters under investigation, have been collected and are printed herewith beginning with the case of *Commonwealth* v. *Hunt*, decided in 1842 and presumably the first case affecting the parties to a strike or lockout in this Commonwealth, and terminating in the case of *Bogni* v. *Perotti*, 224 Mass. 152, which did, in substance, make invalid, through the court declaring unconstitutional, one of the statutes which most fundamentally affects the relations of employer and employee.

Reference to these decisions will enable the inquirer to determine in what manner our courts have treated these matters as they have come before them and what has been declared to be and must be regarded as the Massachusetts law. More than to state those fundamental principles which can be deduced fairly accurately from the decisions cannot be attempted without leading to a complete statement of not only the Massachusetts law, but such other decisions throughout the United States which have a bearing on certain principles and variations of those principles as would be absolutely necessary to make a coherent and complete statement of the law. As to that, the decisions in court records which are printed as part of this report take their place for purposes of lawyers and other persons interested in the Massachusetts law much better than the cases of other States.

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[1] *In re* Debs, 15 Sup. Ct. Rep. 900; 158 U. S. 564.

2. FUNDAMENTAL PRINCIPLES.

A few fundamental, although somewhat abstract principles must, however, be regarded as settled, and a statement of them may be helpful to the layman, particularly in attempting to make up his mind as to matters which lie in the region which still may be regarded as debatable. These are that:

1. Every man has a right to work for whom he pleases, on such terms as he wishes or is able to make, and with such fellow-workmen as he chooses.[1]

2. Every man has a right to hire whom he will on such terms as he can make, and to have the flow of labor to him uninterrupted.[2]

3. Every man has a right to be free from interference or molestation in the conduct of his business or the pursuit of his means of livelihood.[3]

4. These recognized rights of every individual will be protected by the law so far as they may be without infringing upon the exercise of similar rights by others. He who wilfully interferes with them must justify his conduct.[4]

5. It is a justification for one who does so interfere with one of these rights to show that the act was done in the exercise, in a lawful manner, of the right of competition.[5]

6. It is not necessarily lawful for a number to combine to do an act, *e.g.*, to refuse to work for or trade with a given man, which an individual lawfully might do.[6]

7. An unlawful conspiracy is a combination of two or more persons to accomplish an unlawful purpose, or to accomplish a lawful purpose by the use of unlawful means.[7]

8. Primarily the legality of a strike depends upon its purpose.[8]

9. A strike is lawful only when it is against an employer with whom the striking workmen have a direct trade dispute with regard to wages, the hours of labor, or the like, and is brought about for the purpose of obtaining from that employer a betterment of such conditions.[9]

10. A labor union formed to regulate the conduct of its members and to bring about their united action for the purpose of improving the conditions under which they work is not an unlawful combination.[10]

11. A strike to prevent such conditions of employment as are unjust or discriminatory as regards certain of the employees is sufficient justification of a strike for the purpose of remedying those conditions.[11]

12. So, too, a strike directly detrimental to the employer's business may be justifiable when the purpose of the strike is fundamentally based on a material benefit to the employees.[12]

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[1] Plant *v.* Woods, 176 Mass. 492; Pickett *v.* Walsh, 192 Mass. 572.

[2] Vegelahn *v.* Guntner, 167 Mass. 92; L. D. Willcutt & Sons Co. *v.* Driscoll, 200 Mass. 110.

[3] Moran *v.* Dunphy, 177 Mass. 488; Berry *v.* Donovan, 188 Mass. 353.

[4] Walker *v.* Cronin, 107 Mass. 555; Plant *v.* Woods, 176 Mass. 492.

[5] Bowen *v.* Matheson, 14 Allen, 499; Pickett *v.* Walsh, *ubi supra*.

[6] Martell *v.* White, 185 Mass. 255; Pickett *v.* Walsh, *ubi supra*.

[7] Commonwealth *v.* Hunt, 4 Met. 111; Carew *v.* Rutherford, 106 Mass. 1.

[8] L. D. Willcutt & Sons Co. *v.* Driscoll, 200 Mass. 110.

[9] Pickett *v.* Walsh, 192 Mass. 572. A sympathetic strike of whatever nature, a strike for the closed or union shop, so-called, or to compel the employer to coerce non-union employees to join a union are examples of strikes which have been declared unlawful.

[10] Snow *v.* Wheeler, 113 Mass. 179.

[11] Minasian *v.* Osborne, 210 Mass. 250.

[12] Berry *v.* Donovan, 188 Mass. 353; Plant *v.* Woods, 176 Mass. 492.

13. A contract, however, entered into between members of a labor union and certain employers by which it is agreed that all men hired shall be union men, being a "voluntary and unforced agreement, freely made, solely for the mutual advantage of the contracting parties, which does not effect the discharge from employment of anyone" is valid and its performance will therefore not be enjoined in a suit in equity brought by persons not members of that union.[1]

14. Good faith on the part of the strikers in striking for what they think just does not in itself make a strike legal, inasmuch as the question of legal justification is one, in the last analysis, for the court as a matter of law.[2]

15. If the purpose of a strike, however, be the securing of the discharge of certain employees whom other employees dislike, the strike is unlawful unless it can be shown that working with such persons means the loss of one's self-respect.[2]

16. Members of a labor union may strike when their employer refuses to give them all the work pertaining to their trade, even though it results in excluding from the employment non-union men.[3]

17. But where it appears that the respondents acted not for the above purpose but to deprive the complainants of employment, thereby making it impossible for them to obtain their livelihood by their labor, unless they should become members of the respondents' union, upon whatever terms the union might impose, such respondents may be enjoined.[4]

18. So, too, a strike instituted to compel a sub-contractor to refrain from working for another contractor who is employing non-union men, being of the nature of a secondary or compound boycott, is unlawful.[5]

19. Concerted action by the members of a labor union, *e.g.*, a strike which results in interference with the rights of others to employ or to be employed, may be lawful or it may be unlawful.[6]

20. Where persons are under a formal contract to work for a fixed period, it is unlawful to induce or to attempt to induce the breaking of such contract by means of persuasion, peaceable or otherwise; and this is true, whether the attempt is made by an individual or by a combination of individuals.[7]

21. So, too, persons inducing employees under contract with their employer for future service to break those contracts is an unlawful interference with the employer's business which may be enjoined.[8]

22. Where persons are under a formal contract to work, a strike to secure something not due under the contract is unlawful.[9]

23. Competition is not a justification for interference with rights under a formal contract.[10]

24. Where there is not such a formal contract, but either party is free to terminate the relation of employer and employed at will, whether a strike is lawful or unlawful depends upon whether it fairly can be said to be within the limit of allowable competition.[9]

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[1] Hoban *v.* Dempsey, 217 Mass. 166.
[2] *Obiter dictum* in DeMinico *v.* Craig, 207 Mass. 593.
[3] Pickett *v.* Walsh, 192 Mass. 572; Hoban *v.* Dempsey, *ubi supra.*
[4] Fairbanks *v.* McDonald, 219 Mass. 291; Burnham *v.* Dowd, 217 Mass. 351.
[5] New England Cement Gun Co. *v.* McGivern, 218 Mass. 198.
[6] Carew *v.* Rutherford, 106 Mass. 1; Pickett *v.* Walsh, 192 Mass. 572.
[7] Walker *v.* Cronin, 107 Mass. 555; Beekman *v.* Marsters, 195 Mass. 205; Reynolds *v.* Davis, 198 Mass. 294.
[8] Folsom *v.* Lewis, 208 Mass. 336.
[9] Reynolds *v.* Davis, 198 Mass. 294.
[10] Beekman *v.* Marsters, 195 Mass. 205.

25. Where a strike is unlawful the use of any means of carrying it on is unlawful however innocent such means may be in themselves.[1]

26. Even when a strike is lawful it may not be carried on by the use of means that are unlawful.[2]

27. A court of equity will never compel any man to work against his will.[3]

28. But where it is shown that an unlawful strike is in progress a court of equity will, the other necessary elements being present, forbid the doing of any acts in aid of it; and if a lawful strike is being carried on by unlawful means it will forbid the acts which make those means effective.[4]

29. Granted an unjustifiable strike or a justifiable strike by unjustifiable means, such damages as are actually suffered by the complainants can be obtained against those persons who are actually responsible therefor.[5]

30. A statute undertaking to exempt labor unions and associations of employers and their members and officials from liability for tortious acts committed by or on behalf of such union or association is probably unconstitutional.[6]

31. While courts of equity have generally no jurisdiction to restrain the commission of a crime or to assess damages for torts already committed, equity by injunction may protect property from injury when property rights are equitable or when there is no adequate remedy at law.[7]

32. An attempt to change the law so far as it relates to the jurisdiction of courts of equity to restrain threatened injury to property rights where there is no adequate remedy at law and defining the right to labor as a personal and not a property right, was made by the passage of a statute in 1914 (Acts, 1914, Chap. 778), but this statute has been very recently declared to be unconstitutional.[8]

33. Another statute, however, passed in 1911, by giving a right of trial by jury to any person who, in violation of an injunction is also guilty of a crime, protected the respondents from certain arbitrary powers of the courts of equity.[9]

34. When a strike is over, many acts which might, during the progress of the strike, be lawful, may be enjoined, irrespective of loss, presumably on the theory that no further justification implies malice of purpose.[10]

35. Moreover, it has been made a criminal offense for an employer, during the continuance of a strike, lockout, or other trouble among his employees, to advertise publicly in newspapers or otherwise for employees without stating plainly and explicitly in such advertisement "that a strike, lockout or other labor trouble exists in the establishment where such persons are to be employed." [11]

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[1] Reynolds *v.* Davis, 198 Mass. 294.

[2] What means of carrying on a strike are unlawful cannot be said to be completely defined. Physical violence, the threat thereof, or any act which amounts to a breach of the peace or other crime, is certainly so. The matter has been somewhat simplified by an act recently passed by the Legislature, Acts, 1913, Chap. 690 (*see* Appendix C, page 254), by which the limits of persuasion or attempt to persuade any person to do anything or to pursue any line of conduct not unlawful or actionable are somewhat more definitely defined.

[3] Rice *v.* D'Arville, 162 Mass. 559.

[4] This principle may be found in several of the cases.

[5] Hanson *v.* Innis, 211 Mass. 301; DeMinico *v.* Craig, 207 Mass. 593; Berry *v.* Donovan, 188 Mass. 353; Pickett *v.* Walsh, 192 Mass. 572.

[6] Opinion of Justices, 211 Mass. 618.

[7] Worthington *v.* Waring, 157 Mass. 421; Cornellier *v.* Haverhill Shoe Manufacturers' Association, 221 Mass. 554.

[8] Bogni *v.* Perotti, 224 Mass. 152.

[9] Acts, 1911, Chap. 339, § 1.

[10] Steinert & Sons *v.* Tagen, 207 Mass. 394.

[11] Acts, 1910, Chap. 445, as last amended by Acts, 1914, Chap. 347 (*see* Appendix C, p. 253). Both of these statutes have been held to be constitutional. *See* Commonwealth *v.* Libbey, 216 Mass. 356, *infra*, p. 151.

36. But it is also provided that the effect of such statute "shall cease to be operative when the State Board of Conciliation and Arbitration shall determine that the business of the employer . . . is being carried on in the normal and usual manner. . . ."[1]

37. A committee organized during a strike to collect funds for the aid of the strikers is as responsible for the fund as trustees for the benefit of those persons for whom it was collected; and being in the nature of a public charitable trust may be enforced by information in equity filed by the Attorney General.[2]

3. THE DECISIONS OF THE SUPREME JUDICIAL COURT.

Search has been made through the Massachusetts Reports, and this collection of decisions bearing directly upon questions arising in labor disputes, or having intimate connection with such questions, is believed to be complete, but a few cases cited by the courts in some of the cases decided, as authority for some particular point, have been omitted as bearing too remotely upon the general question to be helpful. Lack of space has made necessary the omission of certain paragraphs of the headnotes as given in the official reports, and, in some instances, the reporter's statements of facts have been omitted or abridged.

The decisions themselves are here printed in full. Dissenting opinions, of which there has been a number, have been included. Several of these are instructive and important, and, although it is the majority opinion which states the interpretation of the law as it must stand, it seems wise in order to show the diversity of opinion of the several members of the court to print also such dissenting opinions.

Commonwealth *v.* John Hunt *et als.*[3]

Suffolk. 1842.

4 Metcalf, 111.

The general rules of the common law, making conspiracy an indictable offence, had been used and approved in Massachusetts before the adoption of the constitution of the Commonwealth, and were continued in force by c. VI, § 6, of that instrument. *Aliter*, of the English laws regulating the settlement of paupers, the wages of laborers, and making it penal for any one to use a trade or handicraft to which he had not served a full apprenticeship.

To constitute an indictable conspiracy, there must be a combination of two or more persons, by some concerted action to accomplish some criminal or unlawful purpose; or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means.

An association, the object of which is to adopt measures that have a tendency to impoverish a person — that is, to diminish his gains and profits — is lawful or unlawful, as the means by which that object is to be effected, are lawful or unlawful.

An indictment for a conspiracy to compass or promote a criminal or unlawful purpose must set forth that purpose fully and clearly.

An indictment for a conspiracy to compass or promote a purpose, not in itself criminal or unlawful, by the use of criminal or unlawful means, must set forth the means intended to be used.

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[1] Acts, 1910, Chap. 445, as last amended by Acts, 1914, Chap. 347 (*see* Appendix C, p. 253). Both of these statutes have been held to be constitutional. *See* Commonwealth *v.* Libbey, 216 Mass. 356, *infra*, p. 151.

[2] Attorney General *v.* Bedard, 218 Mass. 378.

[3] For reprints of the stenographer's reports of the testimony of several early American cases relating to the question of "open" or "closed shop," beginning with the case of the Philadelphia Cordwainers in 1806 and ending with the above case, *see* Documentary History of American Industrial Society, Vols. III and IV.

Commonwealth *v.* Hunt.

Indictment for criminal conspiracy in forming an association and agreeing not to work for an employer who should employ workmen not members of the association, held not to warrant conviction.[1] . . .

The indictment set forth that defendants did unlawfully conspire together to injure certain persons named by uniting in an unlawful combination and in making for it unlawful by-laws whereby they agreed to refuse to work for an employer who should employ any workmen who were not members of the association, after notice given him to discharge such workmen. The name of the association was "The Boston Journeymen Bootmakers' Society." The defendants were found guilty in the lower courts and the case came up upon the refusal of the trial judge to rule that the agreement set forth in the indictment did not constitute a criminal conspiracy, and to his ruling that the society organized and for the purpose described in the indictment was an unlawful conspiracy.[2]

Rantoul, for the defendants.

Austin, Attorney General, for the Commonwealth.

Shaw, C.J. Considerable time has elapsed since the argument of this case. It has been retained long under advisement, partly because we were desirous of examining, with some attention, the great number of cases cited at the argument, and others which have presented themselves in course, and partly because we considered it a question of great importance to the Commonwealth, and one which had been much examined and considered by the learned judge of the municipal court.

We have no doubt that, by the operation of the constitution of this Commonwealth, the general rules of the common law, making conspiracy an indictable offence, are in force here, and that this is included in the description of laws which had, before the adoption of the constitution, been used and approved in the Province, Colony, or State of Massachusetts Bay, and usually practised in the courts of law. Const. of Mass., c. VI., § 6. It was so held in *Commonwealth* v. *Boynton*, and *Commonwealth* v. *Pierpont*, cases decided before reports of cases were regularly published, and in many cases since. *Commonwealth* v. *Ward*, 1 Mass. 473, *Commonwealth* v. *Judd* and *Commonwealth* v. *Tibbetts*, 2 Mass. 329, 536. *Commonwealth* v. *Warren*, 6 Mass. 74. Still, it is proper in this connection to remark, that although the common law in regard to conspiracy in this Commonwealth is in force, yet it will not necessarily follow that every indictment at common law for this offence is a precedent for a similar indictment in this State. The general rule of the common law is, that it is a criminal and indictable offence, for two or more to confederate and combine together, by concerted means, to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual. This rule of law may be equally in force as a rule of the common law, in England and in this Commonwealth; and yet it must depend upon the local laws of each country to determine, whether the purpose to be accomplished by the combination, or the concerted means of accomplishing it, be unlawful or criminal in the respective countries. All those laws of the parent country, whether rules of the common law, or early English statutes, which were made for the purpose of regulating the wages of laborers, the settlement of paupers, and making it penal for any one to use a trade or handicraft to which he

[1] For certain other paragraphs of the headnote, this statement has been substituted.

[2] For the statement of facts and argument of counsel this brief summary has been substituted.

had not served a full apprenticeship — not being adapted to the circumstances of our colonial condition — were not adopted, used or approved, and therefore do not come within the description of the laws adopted and confirmed by the provision of the constitution already cited. This consideration will do something towards reconciling the English and American cases, and may indicate how far the principles of the English cases will apply in this Commonwealth, and show why a conviction in England, in many cases, would not be a precedent for a like conviction here. *The King* v. *Journeymen Tailors of Cambridge*, 8 Mod. 10, for instance, is commonly cited as an authority for an indictment at common law, and a conviction of journeymen mechanics of a conspiracy to raise their wages. It was there held, that the indictment need not conclude *contra formam statuti*, because the gist of the offence was the conspiracy, which was an offence at common law. At the same time it was conceded, that the unlawful object to be accomplished was the raising of wages above the rate fixed by a general act of parliament. It was therefore a conspiracy to violate a general statute law, made for the regulation of a large branch of trade, affecting the comfort and interest of the public; and thus the object to be accomplished by the conspiracy was unlawful, if not criminal.

But the rule of law, that an illegal conspiracy, whatever may be the facts which constitute it, is an offence punishable by the laws of this Commonwealth, is established as well by legislative as by judicial authority. Like many other cases, that of murder, for instance, it leaves the definition or description of the offence to the common law, and provides modes for its prosecution and punishment. The Revised Statutes, c. 82, § 28, and c. 86, § 10, allowed an appeal from the court of common pleas and the municipal court, respectively, in cases of a conviction for conspiracy, and thereby recognized it as one of the class of offences, so difficult of investigation, or so aggravated in their nature and punishment, as to render it fit that that party accused should have the benefit of a trial before the highest court of the Commonwealth. And though this right of appeal is since taken away, by St. 1840, c. 87, § 4, this does not diminish the force of the evidence tending to show that the offence is known and recognized by the legislature as a high indictable offence.

But the great difficulty is, in framing any definition or description, to be drawn from the decided cases, which shall specifically identify this offence — a description broad enough to include all cases punishable under this description, without including acts which are not punishable. Without attempting to review and reconcile all the cases, we are of opinion, that as a general description, though perhaps not a precise and accurate definition, a conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means. We use the terms criminal or unlawful, because it is manifest that many acts are unlawful, which are not punishable by indictment or other public prosecution; and yet there is no doubt, we think, that a combination by numbers to do them would be an unlawful conspiracy, and punishable by indictment. Of this character was a conspiracy to cheat by false pretences, without false tokens, when a cheat by false pretences only, by a single person, was not a punishable offence. *Commonwealth* v. *Boynton*, before referred to. So a combination to destroy the reputation of an individual, by verbal calumny which is not indictable. So a conspiracy to induce and

persuade a young female, by false representations, to leave the protection of her parent's house, with a view to facilitate her prostitution. *Rex* v. *Lord Grey*, 3 Hargrave's State Trials, 519.

But yet it is clear, that it is not every combination to do unlawful acts, to the prejudice of another by a concerted action, which is punishable as conspiracy. Such was the case of *The King* v. *Turner*, 13 East, 228, which was a combination to commit a trespass on the land of another, though alleged to be with force, and by striking terror by carrying offensive weapons in the night. The conclusion to which Mr. Chitty comes, in his elaborate work on Criminal Law, Vol. III, p. 1140, after an enumeration of the leading authorities, is, that "we can rest, therefore, only on the individual cases decided, which depend, in general, on particular circumstances, and which are not to be extended."

The American cases are not much more satisfactory. The leading one is that of *Lambert* v. *People of New York*, 9 Cow. 578. On the principal point, the court of errors were equally divided, and the case was decided in favor of the plaintiff in error, who had been convicted before the supreme court, by the casting vote of the president. The principal question was, whether an indictment, charging that several persons, intending unlawfully, by indirect means, to cheat and defraud an incorporated company, and divers others unknown, of their effects, did fraudulently and unlawfully conspire together, injuriously and unjustly, by wrongful and indirect means, to cheat and defraud the company and others of divers effects, and that, in execution thereof, they did, by certain undue, indirect and unlawful means, cheat and defraud the company, etc., was a good and valid indictment. As two distinguished senators, and members of the court of errors, took different sides of this question, the subject was fully and elaborately discussed; the authorities were all reviewed; and the case may be referred to, as a full and able exposition of the learning on the subject.

Let us, then, first consider how the subject of criminal conspiracy is treated by elementary writers. The position cited by Chitty from Hawkins, by way of summing up the result of the cases, is this: "In a word, all confederacies wrongfully to prejudice another are misdemeanors at common law, whether the intention is to injure his property, his person, or his character." And Chitty adds, that "the object of conspiracy is not confined to an immediate wrong to individuals; it may be to injure public trade, to affect public health, to violate public police, to insult public justice, or to do any act in itself illegal." 3 Chit. Crim. Law, 1139.

Several rules upon the subject seem to be well established, to wit, that the unlawful agreement constitutes the gist of the offence, and therefore that it is not necessary to charge the execution of the unlawful agreement. *Commonwealth* v. *Judd*, 2 Mass. 337. And when such execution is charged, it is to be regarded as proof of the intent, or as an aggregation of the criminality of the unlawful combination.

Another rule is a necessary consequence of the former, which is, that the crime is consummate and complete by the fact of unlawful combination, and, therefore, that if the execution of the unlawful purpose is averred, it is by way of aggravation, and proof of it is not necessary to conviction; and therefore the jury may find the conspiracy, and negative the execution, and it will be a good conviction.

And it follows, as another necessary legal consequence, from the same principle, that the indictment must — by averring the unlawful purpose of the conspiracy, or

the unlawful means by which it is contemplated and agreed to accomplish a lawful purpose, or a purpose not of itself criminally punishable — set out an offence complete in itself, without the aid of any averment of illegal acts done in pursuance of such an agreement; and that an illegal combination, imperfectly and insufficiently set out in the indictment, will not be aided by averments of acts done in pursuance of it.

From this view of the law respecting conspiracy, we think it an offence which especially demands the application of that wise and humane rule of the common law, that an indictment shall state, with as much certainty as the nature of the case will admit, the facts which constitute the crime intended to be charged. This is required, to enable the defendant to meet the charge and prepare for his defence, and, in case of acquittal or conviction, to show by the record the identity of the charge, so that he may not be indicted a second time for the same offence. It is also necessary, in order that a person, charged by the grand jury for one offence, may not substantially be convicted, on his trial, of another. This fundamental rule is confirmed by the Declaration of Rights, which declares that no subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally described to him.

From these views of the rules of criminal pleading, it appears to us to follow, as a necessary legal conclusion, that when the criminality of a conspiracy consists in an unlawful agreement of two or more persons to compass or promote some criminal or illegal purpose, that purpose must be fully and clearly stated in the indictment; and if the criminality of the offence, which is intended to be charged, consists in the agreement to compass or promote some purpose, not of itself criminal or unlawful, by the use of fraud, force, falsehood, or other criminal or unlawful means, such intended use of fraud, force, falsehood, or other criminal or unlawful means, must be set out in the indictment. Such, we think, is, on the whole, the result of the English authorities, although they are not quite uniform. 1 East. P. C. 461. 1 Stark. Crim. Pl. (2d ed.) 156. *Opinion of Spencer, Senator*, 9 Cow. 586, and *seq.*

In the case of a conspiracy to induce a person to marry a pauper, in order to change the burden of her support from one parish to another, it was held by Buller, J., that, as the marriage itself was not unlawful, some violence, fraud or falsehood, or some artful or sinister contrivance must be averred, as the means intended to be employed to effect the marriage, in order to make the agreement indictable as a conspiracy. *Rex* v. *Fowler*, 2 Russell on Crimes (1st ed.), 1812. S. C. 1 East P. C. 461.

Perhaps the cases of *The King* v. *Eccles*, 3 Doug. 337, and *The King* v. *Gill*, 2 Barn. & Ald. 204, cited and relied on as having a contrary tendency, may be reconciled with the current of cases, and the principle on which they are founded, by the fact, that the court did consider that the indictment set forth a criminal, or at least an unlawful purpose, and so rendered it unnecessary to set forth the means; because a confederacy to accomplish such purpose, by any means, must be considered an indictable conspiracy, and so the averment of any intended means was not necessary.

With these general views of the law, it becomes necessary to consider the circumstances of the present case, as they appear from the indictment itself, and from the bill of exceptions filed and allowed.

One of the exceptions, though not the first in the order of time, yet by far the most important, was this:

The counsel for the defendants contended, and requested the court to instruct the jury, that the indictment did not set forth any agreement to do a criminal act, or to do any lawful act by any specified criminal means, and that the agreements therein set forth did not constitute a conspiracy indictable by any law of this Commonwealth. But the judge refused so to do, and instructed the jury, that the indictment did, in his opinion, describe a confederacy among the defendants to do an unlawful act, and to effect the same by unlawful means; that the society, organized and associated for the purposes described in the indictment, was an unlawful conspiracy, against the laws of this Commonwealth; and that if the jury believed, from the evidence in the case, that the defendants, or any of them, had engaged in such a confederacy, they were bound to find such of them guilty.

We are here carefully to distinguish between the confederacy set forth in the indictment, and the confederacy or association contained in the constitution of the Boston Journeymen Bootmakers' Society, as stated in the little printed book, which was admitted as evidence on the trial. Because, though it was thus admitted as evidence, it would not warrant a conviction for anything not stated in the indictment. It was proof, as far as it went, to support the averments in the indictment. If it contained any criminal matter not set forth in the indictment, it is of no avail. The question then presents itself in the same form as on a motion in arrest of judgment.

The first count set forth, that the defendants, with divers others unknown, on the day and at the place named, being workmen, and journeymen, in the art and occupation of bootmakers, unlawfully, perniciously and deceitfully designing and intending to continue, keep up, form, and unite themselves, into an unlawful club, society and combination, and make unlawful by-laws, rules and orders among themselves, and thereby govern themselves and other workmen, in the said art, and unlawfully and unjustly to extort great sums of money by means thereof, did unlawfully assemble and meet together, and being so assembled, did unjustly and corruptly conspire, combine, confederate and agree together, that none of them should thereafter, and that none of them would, work for any master or person whatsoever, in the said art, mystery and occupation, who should employ any workman or journeyman, or other person, in the said art, who was not a member of said club, society or combination, after notice given him to discharge such workman from the employ of such master; to the great damage and oppression, etc.

Now it is to be considered that the preamble and introductory matter in the indictment — such as unlawfully and deceitfully designing and intending unjustly to extort great sums, etc. — is mere recital, and not traversable, and therefore cannot aid an imperfect averment of the facts constituting the description of the offence. The same may be said of the concluding matter, which follows the averment, as to the great damage and oppression not only of their said masters, employing them in said art and occupation, but also of divers other workmen in the same art, mystery and occupation, to the evil example, etc. If the facts averred constitute the crime, these are properly stated as the legal inferences to be drawn from them. If they do not constitute the charge of such an offence, they cannot be aided by these alleged consequences.

Stripped then of these introductory recitals and alleged injurious consequences, and of the qualifying epithets attached to the facts, the averment is this; that the

defendants and others formed themselves into a society, and agreed not to work for any person, who should employ any journeyman or other person, not a member of such society, after notice given him to discharge such workman.

The manifest intent of the association is, to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. If the latter were the real and actual object, and susceptible of proof, it should have been specially charged. Such an association might be used to afford each other assistance in times of poverty, sickness and distress; or to raise their intellectual, moral and social condition; or to make improvement in their art; or for other proper purposes. Or the association might be designed for purposes of oppression and injustice. But in order to charge all those, who become members of an association, with the guilt of a criminal conspiracy, it must be averred and proved that the actual, if not the avowed object of the association, was criminal. An association may be formed, the declared objects of which are innocent and laudable, and yet they may have secret articles, or an agreement communicated only to the members, by which they are banded together for purposes injurious to the peace of society or the rights of its members. Such would undoubtedly be a criminal conspiracy, on proof of the fact, however meritorious and praiseworthy the declared objects might be. The law is not to be hoodwinked by colorable pretences. It looks at truth and reality, through whatever disguise it may assume. But to make such an association, ostensibly innocent, the subject of prosecution as a criminal conspiracy, the secret agreement, which makes it so, is to be averred and proved as the gist of the offence. But when an association is formed for purposes actually innocent, and afterwards its powers are abused, by those who have the control and management of it, to purposes of oppression and injustice, it will be criminal in those who thus misuse it, or give consent thereto, but not in the other members of the association. In this case, no such secret agreement, varying the objects of the association from those avowed, is set forth in this count of the indictment.

Nor can we perceive that the objects of this association, whatever they may have been, were to be attained by criminal means. The means which they proposed to employ, as averred in this count, and which, as we are now to presume, were established by the proof, were, that they would not work for a person, who, after due notice, should employ a journeyman not a member of their society. Supposing the object of the association to be laudable and lawful, or at least not unlawful, are these means criminal? The case supposes that these persons are not bound by contract, but free to work for whom they please, or not to work, if they so prefer. In this state of things, we cannot perceive, that it is criminal for men to agree together to exercise their own acknowledged rights, in such a manner as best to subserve their own interests. One way to test this is, to consider the effect of such an agreement, where the object of the association is acknowledged on all hands to be a laudable one. Suppose a class of workmen, impressed with the manifold evils of intemperance, should agree with each other not to work in a shop in which ardent spirit was furnished, or not to work in a shop with any one who used it, or not to work for an employer, who should, after notice, employ a journeyman who habitually used it. The consequences might be the same. A workman, who should still persist in the use of ardent spirit, would find

it more difficult to get employment; a master employing such an one might, at times, experience inconvenience in his work, in losing the services of a skilful but intemperate workman. Still it seems to us, that as the object would be lawful, and the means not unlawful, such an agreement could not be pronounced a criminal conspiracy.

From this count in the indictment, we do not understand that the agreement was, that the defendants would refuse to work for an employer, to whom they were bound by contract for a certain time, in violation of that contract; nor that they would insist that an employer should discharge a workman engaged by contract for a certain time, in violation of such contract. It is perfectly consistent with every thing stated in this count, that the effect of the agreement was, that when they were free to act, they would not engage with an employer, or continue in his employment, if such employer, when free to act, should engage with a workman, or continue a workman in his employment, not a member of the association. If a large number of men, engaged for a certain time, should combine together to violate their contract, and quit their employment together, it would present a very different question. Suppose a farmer, employing a large number of men, engaged for the year, at fair monthly wages, and suppose that just at the moment that his crops were ready to harvest, they should all combine to quit his service, unless he would advance their wages, at a time when other laborers could not be obtained. It would surely be a conspiracy to do an unlawful act, though of such a character, that if done by an individual, it would lay the foundation of a civil action only, and not of a criminal prosecution. It would be a case very different from that stated in this count.

The second count, omitting the recital of unlawful intent and evil disposition, and omitting the direct averment of an unlawful club or society, alleges that the defendants, with others unknown, did assemble, conspire, confederate and agree together, not to work for any master or person who should employ any workman not being a member of a certain club, society or combination, called the Boston Journeymen Bootmaker's Society, or who should break any of their by-laws, unless such workmen should pay to said club, such sum as should be agreed upon as a penalty for the breach of such unlawful rules, etc.; and that by means of said conspiracy they did compel one Isaac B. Wait, a master cordwainer, to turn out of his employ one Jeremiah Horne, a journeyman bootmaker, etc., in evil example, etc. So far as the averment of a conspiracy is concerned, all the remarks made in reference to the first count are equally applicable to this. It is simply an averment of an agreement amongst themselves not to work for a person, who should employ any person not a member of a certain association. It sets forth no illegal or criminal purpose to be accomplished, nor any illegal or criminal means to be adopted for the accomplishment of any purpose. It was an agreement, as to the manner in which they would exercise an acknowledged right to contract with others for their labor. It does not aver a conspiracy or even an intention to raise their wages; and it appears by the bill of exceptions, that the case was not put upon the footing of a conspiracy to raise their wages. Such an agreement, as set forth in this count, would be perfectly justifiable under the recent English statute, by which this subject is regulated. St. 6 Geo. IV. c. 129. See Roscoe Crim. Ev. (2d Amer. ed.) 368, 369.

As to the latter part of this count, which avers that by means of said conspiracy, the defendants did compel one Wait to turn out of his employ one Jeremiah Horne,

we remark, in the first place, that as the acts done in pursuance of a conspiracy, as we have before seen, are stated by way of aggravation, and not as a substantive charge; if no criminal or unlawful conspiracy is stated, it cannot be aided and made good by mere matter of aggravation. If the principal charge falls, the aggravation falls with it. *State* v. *Rickey*, 4 Halst. 293.

But further; if this is to be considered as a substantive charge, it would depend altogether upon the force of the word "compel," which may be used in the sense of coercion, or duress, by force or fraud. It would therefore depend upon the context and the connection with other words, to determine the sense in which it was used in the indictment. If, for instance, the indictment had averred a conspiracy, by the defendants, to compel Wait to turn Horne out of his employment, and to accomplish that object by the use of force or fraud, it would have been a very different case; especially if it might be fairly construed, as perhaps in that case it might have been, that Wait was under obligation, by contract, for an unexpired term of time, to employ and pay Horne. As before remarked, it would have been a conspiracy to do an unlawful, though not a criminal act, to induce Wait to violate his engagement, to the actual injury of Horne. To mark the difference between the case of a journeyman or a servant and master, mutually bound by contract, and the same parties when free to engage anew, I should have before cited the case of the *Boston Glass Co.* v. *Binney*, 4 Pick. 425. In that case, it was held actionable to entice another person's hired servant to quit his employment, during the time for which he was engaged; but not actionable to treat with such hired servant, whilst actually hired and employed by another, to leave his service, and engage in the employment of the person making the proposal, when the term for which he is engaged shall expire. It acknowledges the established principle, that every free man, whether skilled laborer, mechanic, farmer or domestic servant, may work or not work, or work or refuse to work with any company or individual, at his own option, except so far as he is bound by contract. But whatever might be the force of the word "compel," unexplained by its connection, it is disarmed and rendered harmless by the precise statement of the means, by which such compulsion was to be effected. It was the agreement not to work for him, by which they compelled Wait to decline employing Horne longer. On both of these grounds, we are of opinion that the statement made in this second count, that the unlawful agreement was carried into execution, makes no essential difference between this and the first count.

The third count, reciting a wicked and unlawful intent to impoverish one Jeremiah Horne, and hinder him from following his trade as a bootmaker, charges the defendants, with others unknown, with an unlawful conspiracy, by wrongful and indirect means, to impoverish said Horne and to deprive and hinder him from his said art and trade and getting his support thereby, and that, in pursuance of said unlawful combination, they did unlawfully and indirectly hinder and prevent, etc., and greatly impoverish him.

If the fact of depriving Jeremiah Horne of the profits of his business, by whatever means it might be done, would be unlawful and criminal, a combination to compass that object would be an unlawful conspiracy, and it would be unnecessary to state the means. Such seems to have been the view of the court in *The King* v. *Eccles*, 3 Doug. 337, though the case is so briefly reported, that the reasons, on which it rests, are not

very obvious. The case seems to have gone on the ground, that the means were matter of evidence, and not of averment; and that after verdict, it was to be presumed, that the means contemplated and used were such as to render the combination unlawful and constitute a conspiracy.

Suppose a baker in a small village had the exclusive custom of his neighborhood, and was making large profits by the sale of his bread. Supposing a number of those neighbors, believing the price of his bread too high, should propose to him to reduce his prices, or if he did not, that they would introduce another baker; and on his refusal, such other baker should, under their encouragement, set up a rival establishment, and sell his bread at lower prices; the effect would be to diminish the profit of the former baker, and to the same extent to impoverish him. And it might be said and proved, that the purpose of the associates was to diminish his profits, and thus impoverish him, though the ultimate and laudable object of the combination was to reduce the cost of bread to themselves and their neighbors. The same thing may be said of all competition in every branch of trade and industry; and yet it is through that competition, that the best interests of trade and industry are promoted. It is scarcely necessary to allude to the familiar instances of opposition lines of conveyance, rival hotels, and the thousand other instances, where each strives to gain custom to himself, by ingenious improvements, by increased industry, and by all the means by which he may lessen the price of commodities, and thereby diminish the profits of others.

We think, therefore, that associations may be entered into, the object of which is to adopt measures that may have a tendency to impoverish another, that is, to diminish his gains and profits, and yet so far from being criminal or unlawful, the object may be highly meritorious and public spirited. The legality of such an association will therefore depend upon the means to be used for its accomplishment. If it is to be carried into effect by fair or honorable and lawful means, it is, to say the least, innocent; if by falsehood or force, it may be stamped with the character of conspiracy. It follows as a necessary consequence, that if criminal and indictable, it is so by reason of the criminal means intended to be employed for its accomplishment; and as a further legal consequence, that as the criminality will depend on the means, those means must be stated in the indictment. If the same rule were to prevail in criminal, which holds in civil proceedings — that a case defectively stated may be aided by a verdict — then a court might presume, after verdict, that the indictment was supported by proof of criminal or unlawful means to effect the object. But it is an established rule in criminal cases, that the indictment must state a complete indictable offence, and cannot be aided by the proof offered at the trial.

The fourth count avers a conspiracy to impoverish Jeremiah Horne, without stating any means; and the fifth alleges a conspiracy to impoverish employers, by preventing and hindering them from employing persons, not members of the Bootmakers' Society; and these require no remarks, which have not been already made in reference to the other counts.

One case was cited, which was supposed to be much in point, and which is certainly deserving of great respect. *The People* v. *Fisher*, 14 Wend. 1. But it is obvious, that this decision was founded on the construction of the revised statutes of New York, by which this matter of conspiracy is now regulated. It was a conspiracy by journeymen to raise their wages, and it was decided to be a violation of the statutes, making it

criminal to commit any act injurious to trade or commerce. It has, therefore, an indirect application only to the present case.

A caution on this subject, suggested by the commissioners for revising the statutes of New York, is entitled to great consideration. They are alluding to the question, whether the law of conspiracy should be so extended, as to embrace every case where two or more unite in some fraudulent measure to injure an individual, by means not in themselves criminal. "The great difficulty," say they, "in enlarging the definition of this offence, consists in the inevitable result of depriving the courts of equity of the most effectual means of detecting fraud, by compelling a discovery on oath. It is a sound principle of our institutions, that no man shall be compelled to accuse himself of any crime; which ought not to be violated in any case. Yet such must be the result, or the ordinary jurisdiction of courts of equity must be destroyed, by declaring any private fraud, when committed by two, or any concert to commit it, criminal." 9 Cow. 625. In New Jersey, in a case which was much considered, it was held that an indictment will not lie for a conspiracy to commit a civil injury. *State* v. *Rickey*, 4 Halst. 293. And such seemed to be the opinion of Lord Ellenborough, in *The King* v. *Turner*, 13 East. 231, in which he considered that the case of *The King* v. *Eccles*, 3 Doug. 337, though in form an indictment for a conspiracy to prevent an individual from carrying on his trade, yet in substance was an indictment for a conspiracy in restraint of trade, affecting the public.

It appears by the bill of exceptions, that it was contended on the part of the defendants, that this indictment did not set forth any agreement to do a criminal act, or to do any lawful act by criminal means, and that the agreement therein set forth did not constitute a conspiracy indictable by the law of this State, and that the court was requested so to instruct the jury. This the court declined doing, but instructed the jury that the indictment did describe a confederacy among the defendants to do an unlawful act, and to effect the same by unlawful means — that the society, organized and associated for the purposes described in the indictment, was an unlawful conspiracy against the laws of this State, and that if the jury believed, from the evidence, that the defendants or any of them had engaged in such confederacy, they were bound to find such of them guilty.

In this opinion of the learned judge, this court, for the reasons stated, cannot concur. Whatever illegal purpose can be found in the constitution of the Bootmakers' Society, it not being clearly set forth in the indictment, cannot be relied upon to support this conviction. So if any facts were disclosed at the trial, which, if properly averred, would have given a different character to the indictment, they do not appear in the bill of exceptions, nor could they, after verdict, aid the indictment. But looking solely at the indictment, disregarding the qualifying epithets, recitals and immaterial allegations, and confining ourselves to facts so averred as to be capable of being traversed and put in issue, we cannot perceive that it charges a criminal conspiracy punishable by law. The exceptions must, therefore, be sustained, and the judgment arrested.

Several other exceptions were taken and have been argued; but this decision on the main question has rendered it unnecessary to consider them.

John Bowen *v.* Murdoch Matheson *et als.*[1]

Suffolk. 1867.

14 Allen, 499.

An action for conspiracy will not lie in favor of a shipping-master to recover damages against persons who combine together and form an association to control the business of the shipping-masters of a city, by requiring the members to conform to certain rules and rates, and to use their best endeavors to prevent their boarders from shipping in any vessel where any of the crew are shipped from boarding-houses not in good standing with the association, and to abstain from shipping men from any office after the association shall have suspended business with it, and who in pursuance thereof take their men out of ships because the plaintiff's men are in the same, and refuse to furnish and ship men to the plaintiff, and prevent men from shipping with him, and notify the public that they have laid him on the shelf, (that is, are acting against him as a shipping-master,) and notify his customers and friends that he cannot ship seamen for them, and prevent his getting seamen to ship, and thus break up his business.

Chapman, J. The gist of the plaintiff's action is not the conspiracy alleged in the declaration, but the damage done to the plaintiff by the alleged acts of the defendants; and the averment that the acts were done in pursuance of a conspiracy does not change the nature of the action. *Parker* v. *Huntington*, 2 Gray, 124. In order to be good, the declaration must allege against the defendants the commission of illegal acts. Its allegations must be analyzed, to ascertain whether they contain a sufficient statement of such acts.

The first allegation as to what they did is very loose and general, namely, that, in pursuance of their conspiracy as aforesaid, they did each and every of the above acts and things against the plaintiff. Then follows an enumeration of the acts. (1) "Did take their men out of ships because the plaintiff's men were in the same." We cannot see that this act is in itself unlawful. It does not appear that they were under any obligation to keep their men on board the same ship with the plaintiff's men, or violated the rights of the plaintiff or of any other person in taking them out. (2) "Did refuse to furnish and ship men to him." Such refusal is lawful in the absence of any legal obligation to furnish and ship men to him, and no such obligation is stated. (3) "Did prevent men from shipping with him." This might be done in many ways which are lawful and proper, and as no illegal methods are stated the allegation is bad. (4) "Did notify the public that they had laid him on the shelf." In another part of the declaration this is alleged to mean that the defendants "were acting against him as aforesaid." It does not appear to be slanderous, and therefore is not actionable. (5) "Did publicly notify his customers and friends that he could not ship seamen for them." This is not actionable, because it does not appear that he had a right to ship seamen for them. (6) "Did interfere with his business as aforesaid; did prevent his getting seamen to ship; did prevent his getting employ as shipping-master; and did break up the plaintiff in his business and calling by their conspiracy, acts and doings, as aforesaid, and compel him to abandon his said business." All this adds nothing to the substantial allegations of acts done by the defendants, but is to be regarded as alleging the consequences of the acts before alleged.

[1] All that is material to an understanding of the case being contained in the opinion, the rest of the case has been omitted.

Bowen *v.* Matheson.

If we look at the allegations of acts done in connection with the intent set forth, we must look into the rules and regulations referred to, a copy of which is annexed to the declaration. They are entitled "Constitution and By-laws of the Seamen's Mutual Benefit Association of the City of Boston." No person can be a member who does not keep a regular seamen's boarding-house. Members are forbidden to ship seamen for less than certain specified rates of wages. They are to use their best endeavors to prevent their boarders from shipping in any vessel when any of the crew are shipped from boarding-houses that are not in good standing with the association. Other articles relate to the duties of the members toward each other, in endeavoring to secure payment of board-bills, and not taking advantage of each other. We can see nothing criminal in any of these stipulations; see *Commonwealth* v. *Hunt*, 4 Met. 111; and nothing illegal. If their effect is to destroy the business of shipping-masters who are not members of the association, it is such a result as in the competition of business often follows from a course of proceeding that the law permits. New inventions and new methods of transacting business often destroy the business of those who adhere to old methods. Sometimes associations break down the business of individuals, and sometimes an individual is able to destroy the business of associated men. It would be nothing novel if the plaintiff in the exercise of his ingenuity should in his turn adopt some improvement that shall compel the defendants to dissolve their connection. As the declaration sets forth no illegal acts on the part of the defendants, the demurrer must be sustained.

John Carew *v.* Alexander Rutherford *et als.*

Suffolk. 1870.

106 Mass. 1.

A conspiracy to obtain from a master mechanic, whose business requires the employment of workmen, money which he is under no legal liability to pay, by inducing or threatening to induce workmen to leave his employment, and deterring or threatening to deter others from entering it, so as to render him reasonably apprehensive that he cannot carry on business without making the payment, is illegal; and in an action of tort he may recover the sum so paid, and damages for the injury of his business by the acts of the conspirators; but whether he can recover back the sum paid, in an action of contract, as money had and received to his use, *quære*.

Contract against Alexander Rutherford, Joseph Wagner, Edward Shea, William Cooney, and the "Journeymen Freestone Cutters' Association of Boston and vicinity, an unincorporated association composed of the defendants personally named and other persons to the plaintiff unknown", to recover back $500 as money had and received by the defendants to the plaintiff's use;[1]. . .

At the trial in the superior court, before Brigham, C.J., without a jury, the judge found these facts:

"The plaintiff in August 1868 was a freestone cutter at South Boston, and had contracted to furnish cut freestone for various buildings, among which was the Roman Catholic cathedral in Boston, in large quantity and at a contract price of $80,000. The defendants, and sixteen other persons, all journeymen freestone cutters, and

[1] A review of the pleadings and contents thereof has been omitted.

members of an unincorporated association called the Journeymen Freestone Cutters' Association of Boston, Charlestown, Roxbury, and their vicinities, (of which association the plaintiff was not a member,) together with eight or ten laborers, who were not journeymen stone cutters or skilled laborers, and four apprentices to the freestone cutting trade, constituted the stonecutting force relied upon by the plaintiff to fulfil his said freestone contracts.[1] . . . On the morning of August 18, 1868, the defendant William Cooney, president of said association, who was foreman in the plaintiff's establishment, notified the plaintiff that on the evening of the day before, at a special meeting of the association, it was voted that the plaintiff should pay to the association the sum of $500 as a penalty imposed upon him by the association because he had sent to New York to be executed some of the freestone cutting to be done under his contract for the cathedral; and upon the plaintiff's refusal to make such payment, all the journeymen freestone cutters employed by him (among them, the defendants) left the plaintiff's service in a body, agreeably to said vote and the rules of said association. At his request, the plaintiff was permitted to appear at a meeting of the association and explain the circumstances which induced him to send a part of the stonecutting work required for the cathedral to New York to be executed; and, after explaining that his action in that matter was because of his not having the proper stock for that part of the work when he could procure journeymen to work upon it, and when, having procured such stock, he could not procure a sufficient force of journeymen to work it, there was a motion made and debated in the association, that the previous vote, to the effect that members should withdraw from the plaintiff's service unless he paid $500 as aforesaid, should be reconsidered and rescinded; but the association refused to reconsider or rescind the vote. At this meeting, said vote was read to the plaintiff by the secretary of the association. On the same night or the next morning, the defendants Cooney and Shea, and others, told the plaintiff that all the association men in his shop would desert him at once unless he paid the $500, and that the association refused to rescind the vote. The plaintiff refused to pay, and all his men left his shop at once and in a body, under the lead of Cooney and Shea; and the plaintiff was without men for a week or ten days, and until after he had made the payment of $500 as hereinafter stated. Previously to the payment of the money, and after the men had left him, Cooney and others of the defendants told the plaintiff that neither these men, nor any association men, would be allowed to work in his shop, if he refused to pay the money demanded. In consequence of the withdrawal of the defendants and the other journeymen, the freestone cutting which the plaintiff had contracted to do was stopped, because it was impossible for the plaintiff to procure journeymen or other freestone cutters, who were not members of said association, and who had such skill as was required for the fulfilment of his contracts. Several days after the defendants and the other journeymen had withdrawn from the plaintiff's service, the plaintiff, induced by the necessity of doing so to fulfil said contracts and continue his other stonecutting work, paid to the defendants, to the use of said association, the sum of $500, on August 26, 1868; and the defendants and other journeymen, who had withdrawn as aforesaid, returned to the service and employment of the plaintiff. Said payment was made by the plaintiff as follows: He first made a check payable to the order of the association. This the

[1] A footnote in the report of this case setting out the by-laws of the Association in detail has been omitted.

defendants Cooney and Wagner refused to take, on the ground that no one of those active in procuring it was willing to indorse it. The plaintiff then made a check payable to Wagner or bearer, and gave this check to Cooney, and he, Wagner and others went with the plaintiff to the bank, when the money was passed to Wagner's credit as treasurer of the association. No receipt was given to the plaintiff for this money."

The judge further found as a fact "that the money demanded of the plaintiff was demanded without right, and not under any contract or agreement between him and the defendants."

Upon these findings the judge ruled that the facts would not sustain the action and ordered judgment for the defendants. The plaintiff alleged exceptions.

E. F. Hodges & J. F. Barrett, for the plaintiff.

S. J. Thomas, for the defendants.

CHAPMAN, C.J. The declaration contains a count in tort, and a count for money had and received. The count in tort alleges, in substance, that the plaintiff was engaged in carrying on the business of cutting freestone in Boston, and employed a great many workmen, and had entered into a contract with builders to furnish them with such stone in large quantities; and the defendants, conspiring and confederating together to oppress and extort money from him, and pretending that he had allowed some of said builders, with whom he had made contracts, to withdraw from his shop a part of the work he had contracted to do, and to procure the same to be done out of the state, caused a vote of the Journeymen Freestone Cutters' Association of Boston to be passed, to the effect that a fine of five hundred dollars was levied upon the plaintiff, and read the vote to him, and threatened him that unless he paid the fine they would, by the power of the association, cause a great number of the workmen employed by him to leave his service; that he refused to pay it, and the defendants caused twelve of his workmen to leave his service for that reason, at their instigation. They further threatened him that, unless he paid the fine, they would, by the power of the association, prevent him from obtaining suitable workmen for carrying on his business, and did so prevent him till he paid the fine, and thus extorted from him the sum of five hundred dollars.

Trial by jury was waived, and the facts found by the judge are reported. It appeared that the plaintiff had made a contract to furnish stone for the Roman Catholic Cathedral in Boston, and had employed journeymen to do the work, and relied upon them to fulfil his contracts; and the facts stated in the declaration were substantially proved. The plaintiff was not a member of the association. He had sent some of his work to be done in New York because he could not obtain a sufficient force to do it in Boston, and had not proper stock for the work. If the action can be maintained, it is on the ground that the defendants have done the acts alleged, in violation of the legal rights of the plaintiff.

By the Gen. Sts., c. 160, § 28, which is cited by the plaintiff's counsel, "whoever, either verbally or by a written or printed communication," "maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, shall be punished" as the section prescribes. As this is a penal statute, perhaps it does not extend to a threat to injure one's business by

preventing people from assisting him to prosecute it, whereby he loses his profits and is compelled to pay a large sum of money to those who make the threat, though the threat is quite analogous to those specified in the statute, and may be not less injurious. We shall therefore consider, not whether the acts alleged and proved against the defendants were unlawful within the statute, but whether they were so at common law.

The constitution and by-laws of the Journeymen Freestone Cutters' Association, whose agents the defendants profess to have been, have been laid before us. We have not had occasion to examine them critically; for the doctrine stated in *Commonwealth* v. *Hunt*, 4 Met. 111, 129, is unquestionably correct, namely, that, when an association is formed for purposes actually innocent, and afterwards its powers are abused, by those who have the control and management of it, to purposes of oppression and injustice, it will be criminal in those who misuse it, but not in the other members of the association. Upon the same principle, if the wrongful acts done are tortious, whether criminal or not, the persons who are guilty of the tortious acts will be civilly liable to those whom they have injured. If the defendants have injured the plaintiff unlawfully, the articles of association cannot protect them, and it is immaterial whether persons who are not parties to the action are guilty.

The acts charged are alleged to have been done in pursuance of a conspiracy. On this point, if two or more persons combine to accomplish an unlawful purpose, or a purpose not unlawful by unlawful means, their conduct comes within the definition of a criminal conspiracy as stated in *Commonwealth* v. *Hunt*, cited above. If, in pursuance of such a conspiracy, they do an act injurious to any person, he may have an action against them to recover the damage they have done him.

One of the aims of the common law has always been to protect every person against the wrongful acts of every other person, whether committed alone or in combination with others; and it has provided an action for injuries done by disturbing a person in the enjoyment of any right or privilege which he has. Many illustrations of this doctrine are given in Bac. Ab. Actions on the Case, F., among which are the following: "If A., being a mason, and using to sell stones, is possessed of a certain stonepit, and B., intending to discredit it and deprive him of the profits of the said mine, imposes so great threats upon his workmen, and disturbs all comers, threatening to maim and vex them with suits if they buy any stones, so that some desist from working, and others from buying, A. shall have an action upon the case against B., for the profit of his mine is thereby impaired." So "if a man menaces my tenants at will of life and member, *per quod* they depart from their tenures, an action upon the case lies against him." "If a man discharges guns near my decoy-pond with design to damnify me by frightening away the wild fowl resorting thereto, and the wild fowl are thereby frightened away, and I am damnified, an action on the case lies against him." Slander as to one's profession or title is a wrong of a similar character.

The illustrations given in former times relate to such methods of doing injury to others as were then practised, and to the kinds of remedy then existing. But as new methods of doing injury to others are invented in modern times, the same principles must be applied to them, in order that peaceable citizens may be protected from being disturbed in the enjoyment of their rights and privileges; and existing forms of remedy must be used. Thus in the recent case of *Marsh* v. *Billings*, 7 Cush. 322, the plaintiff, being a hotel-keeper, had a badge on his coaches indicating the name of his hotel.

The defendant adopted his badge, and used it fraudulently to entice customers away from his hotel, and was held liable to an action for the damage occasioned to the plaintiff thereby.

In the cases cited above, the injury was done by an individual; but there are other cases where an element of the tort is a conspiracy of two or more persons who combine together for the purpose of doing the wrong. Any person has a right to express in a reasonable manner approbation or disapprobation of an actor at a theatre. But if several persons combine together to ruin an actor, and hire persons to attend, and with hissing, groans and yells, compel him to desist, and prevent the manager from employing him, such conduct is actionable. *Gregory* v. *Brunswick*, 6 Man. & Gr. 205.

There are many cases where money has been wrongfully obtained by fraud, oppression or taking undue advantage of another, without doing him any other injury. This, being tortious, would sustain an action expressly alleging the tort. But an action for money had and received has been maintained in many cases where money has been received tortiously without any color of contract. 1 Chit. Pl. (6th ed.) 352. This class of cases is referred to, because they discuss the question what constitutes an unlawful obtaining of money, such as will subject the party obtaining it to an action for damages.

In *Shaw* v. *Woodcock*, 7 B. & C. 73, it is said that, if a party making a payment is obliged to pay the money in order to obtain possession of things to which he is entitled, the payment is not a voluntary, but a compulsory payment, and may be recovered back.

In *Morgan* v. *Palmer*, 4 D. & R. 283, Abbott, C.J., says that, in order to render a payment voluntary in the proper sense of the word, the parties concerned must stand upon equal terms; there must be no duress operating upon the one; there must be no oppression or fraud practised by the other.

In *Cadaval* v. *Collins*, 4 Ad. & El. 858, money was recovered back which was obtained by abuse of legal process.

In *Wakefield* v. *Newbon*, 6 Q. B. 276, money extorted from another by means of the wrongful detention of his goods was recovered back.

The same doctrine is well established in this country. In *Sortwell* v. *Horton*, 28 Verm. 373, the principle was stated to be, that money may be recovered back that had been paid in discharge of a claim which was fictitious and false, and known to be so by the party making the claim, and who induced the payment by menaces, duress, or taking undue advantage of the other's situation. There are several cases where the action has been maintained to recover back money which was paid to procure a release of property which the defendant had detained illegally; and in some of them the principle is thoroughly discussed. *Chase* v. *Dwinal*, 7 Greenl. 134. *Harmony* v. *Bingham*, 2 Kernan, 99. *Maxwell* v. *Griswold*, 10 How. 242. *Cobb* v. *Charter*, 32 Conn. 358. In *James* v. *Roberts*, 18 Ohio, 548, the court enjoined a party from enforcing the collection of a note which he had induced the plaintiff to give by threats of a groundless prosecution. *Evans* v. *Huey*, 1 Bay, 13, was an action on a note. The plaintiff went to the defendant's house in the night, with a party of armed men, and insisted on the defendant's settling and giving him the note. There was no threat or duress, but the court held that, as the circumstances were sufficient to awaken his apprehensions, it was not to be regarded as a voluntary payment.

In the two cases last cited, the principle was enforced by protecting the injured party against a suit.

The cases in regard to the recovery back of money which has been wrongfully obtained are very numerous. Many of them are collected in the notes to *Marriot* v. *Hampton*, 2 Smith Lead. Cas. (6th Am. ed.) 453. There is a large class of cases in which it cannot be recovered back, like *Marriot* v. *Hampton*, and like *Benson* v. *Monroe*, 7 Cush. 125. In the latter case, the defendant had made a claim in good faith, under a statute which he believed to be valid. The plaintiff had preferred to settle and pay it, rather than litigate the matter further. It turned out, by the decision in a subsequent case, that if he had carried the case to the Supreme Court of the United States he would have prevailed on the ground that the statute was unconstitutional. But neither this, nor any of the other cases, gives any countenance to the idea that money can be obtained by fraud or oppression, and with knowledge that the claim is unfounded, without exposing the party obtaining it to an action.

Without undertaking to lay down a precise rule applicable to all cases, we think it clear that the principle which is established by all the authorities cited above, whether they are actions of tort for disturbing a man in the exercise of his rights and privileges, or to recover back money tortiously obtained, extends to a case like the present. We have no doubt that a conspiracy against a mechanic, who is under the necessity of employing workmen in order to carry on his business, to obtain a sum of money from him, which he is under no legal liability to pay, by inducing his workmen to leave him, and by deterring others from entering into his employment, or by threatening to do this, so that he is induced to pay the money demanded, under a reasonable apprehension that he cannot carry on his business without yielding to the illegal demand, is an illegal, if not a criminal, conspiracy; that the acts done under it are illegal; and that the money thus obtained may be recovered back, and, if the parties succeed in injuring his business, they are liable to pay all the damage thus done to him. It is a species of annoyance and extortion which the common law has never tolerated.

This principle does not interfere with the freedom of business, but protects it. Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can. He may change from one occupation to another, and pursue as many different occupations as he pleases, and competition in business is lawful. He may refuse to deal with any man or class of men. And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions. *Commonwealth* v. *Hunt*, 4 Met. 111, cited above. *Boston Glass Manufactory* v. *Binney*, 4 Pick. 425. *Bowen* v. *Matheson*, 14 Allen, 499.

This freedom of labor and business has not always existed. When our ancestors came here, many branches of labor and business were hampered by legal restrictions created by English statutes; and it was a long time before the community fully understood the importance of freedom in this respect. Some of our early legislation is of this character. One of the colonial acts, entitled "An act against oppression," punished by fine and imprisonment such indisposed persons as may take the liberty to oppress and wrong their neighbors by taking excessive wages for their work, or unrea-

sonable prices for merchandises or other necessary commodities as may pass from man to man. Anc. Chart. 172. Another required artificers, or handicraftmen meet to labor, to work by the day for their neighbors, in mowing, reaping of corn and the inning thereof. Ib. 210. Another act regulated the price of bread. Ib. 752. Some of our town records show that, under the power to make by-laws, the towns fixed the prices of labor, provisions and several articles of merchandise, as late as the time of the Revolutionary War. But experience and increasing intelligence led to the abolition of all such restrictions, and to the establishment of freedom for all branches of labor and business; and all persons who have been born and educated here, and are obliged to begin life without property, know that freedom to choose their own occupation and to make their own contracts not only elevates their condition, but secures to skill and industry and economy their appropriate advantages.

Freedom is the policy of this country. But freedom does not imply a right in one person, either alone or in combination with others, to disturb or annoy another, either directly or indirectly, in his lawful business or occupation, or to threaten him with annoyance or injury, for the sake of compelling him to buy his peace; or, in the language of the statute cited above, "with intent to extort money or any pecuniary advantage whatever, or to compel him to do any act against his will." The acts alleged and proved in this case are peculiarly offensive to the free principles which prevail in this country; and if such practices could enjoy impunity, they would tend to establish a tyranny of irresponsible persons over labor and mechanical business which would be extremely injurious to both. *Exceptions sustained.*

After this decision, the case was settled by the parties, without another trial.

Samuel Walker *et ali. v.* Michael Cronin.

Worcester. 1871.

107 Mass. 555.

An action of tort may be maintained upon a count which alleges that the plaintiff was a manufacturer of shoes, and for the prosecution of his business it was necessary for him to employ many shoemakers; that the defendant, well knowing this, did unlawfully and without justifiable cause molest him in carrying on said business, with the unlawful purpose of preventing him from carrying it on, and wilfully induced many shoemakers who were in his employment, and others who were about to enter into it, to abandon it without his consent and against his will; and that thereby the plaintiff lost their services, and profits and advantages which he would have derived therefrom, and was put to great expense to procure other suitable workmen, and compelled to pay larger prices for work than he would have had to pay but for the said doings of the defendant, and otherwise injured in his business.

An action of tort may be maintained upon a count which alleges that the plaintiff entered into contracts with certain shoemakers for them severally to make stock, which he delivered to them, into shoes, and return the shoes to his factory; that the defendant, well knowing this, with the unlawful purpose of preventing him from carrying on his business, induced them to return the stock unfinished to the factory, and to neglect and refuse to make it into shoes as they had agreed to do; and that the stock was thereby damaged, and the plaintiff put to trouble and expense in reassorting it and procuring it to be finished, and compelled to pay larger prices for the finishing of it than he would have done under said contracts, and by reason of the said unlawful doings of the defendant was hindered and put to expense and otherwise injured in his business.[1] . . .

[1] The third paragraph of the headnote, the statement of facts, and arguments of counsel have been omitted.

Walker *v.* Cronin.

WELLS, J. The declaration, in its first count, alleges that the defendant did, "unlawfully and without justifiable cause, molest, obstruct and hinder the plaintiffs from carrying on" their business of manufacture and sale of boots and shoes, "with the unlawful purpose of preventing the plaintiffs from carrying on their said business, and wilfully persuaded and induced a large number of persons who were in the employment of the plaintiffs," and others "who were about to enter into" their employment, "to leave and abandon the employment of the plaintiffs, without their consent and against their will;" whereby the plaintiffs lost the services of said persons, and the profits and advantages they would otherwise have made and received therefrom, and were put to large expenses to procure other suitable workmen, and suffered losses in their said business.

This sets forth sufficiently (1) intentional and wilful acts (2) calculated to cause damage to the plaintiffs in their lawful business, (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice), and (4) actual damage and loss resulting.

The general principle is announced in Com. Dig. Action on the Case, A.: "In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired in damages." The intentional causing of such loss to another, without justifiable cause, and with the malicious purpose to inflict it, is of itself a wrong. This proposition seems to be fully sustained by the references in the case of *Carew* v. *Rutherford*, 106 Mass. 1, 10, 11.

In the case of *Keeble* v. *Hickeringill*, as contained in a note to *Carrington* v. *Taylor*, 11 East, 571, 574, both actions being for damages by reason of frightening wild fowl from the plaintiff's decoy, Chief Justice Holt alludes to actions maintained for scandalous words which are actionable only by reason of being injurious to a man in his profession or trade, and adds: "How much more, when the defendant doth an actual and real damage to another when he is in the very act of receiving profit in his employment. Now there are two sorts of acts for doing damage to a man's employment, for which an action lies; the one is in respect of a man's privilege, the other is in respect of his property." After considering injuries to a man's franchise or privilege, he proceeds: "The other is where a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood; there an action lies in all cases." From the several reports of this case it is not clear whether the action was maintained on the ground that the wild ducks were frightened out of the plaintiff's decoy, as would appear from 3 Salk. 9, and Holt, 14, 17, 18; or upon the broader one, that they were driven away and prevented from resorting there, as the case is stated in 11 Mod. 74, 130. But the doctrine thus enunciated by Lord Holt covers both aspects of the case; as does his illustration of frightening boys from going to school, whereby loss was occasioned to the master. Of like import is the case of *Tarleton* v. *McGawley*, Peake, 205, in which Lord Kenyon held that an action would lie for frightening the natives upon the coast of Africa, and thus preventing them from coming to the plaintiff's vessel to trade, whereby he lost the profits of such trade.

There are indeed many authorities which appear to hold that to constitute an actionable wrong there must be a violation of some definite legal right of the plaintiff. But those are cases, for the most part at least, where the defendants were themselves acting in the lawful exercise of some distinct right, which furnished the defence of a

justifiable cause for their acts, except so far as they were in violation of a superior right in another.

Thus every one has an equal right to employ workmen in his business or service; and if, by the exercise of this right in such manner as he may see fit, persons are induced to leave their employment elsewhere, no wrong is done to him whose employment they leave, unless a contract exists by which such other person has a legal right to the further continuance of their services. If such a contract exists, one who knowingly and intentionally procures it to be violated may be held liable for the wrong, although he did it for the purpose of promoting his own business.

One may dig upon his own land for water, or any other purpose, although he thereby cuts off the supply of water from his neighbor's well. *Greenleaf* v. *Francis*, 18 Pick. 117. It is intimated, in this case, that such acts might be actionable if done maliciously. But the rights of the owner of land being absolute therein, and the adjoining proprietor having no legal right to such a supply of water from the lands of another, the superior right must prevail. Accordingly it is generally held that no action will lie against one for acts done upon his own land in the exercise of his rights of ownership, whatever the motive, if they merely deprive another of advantages, or cause a loss to him, without violating any legal right; that is, the motive in such cases is immaterial. *Frazier* v. *Brown*, 12 Ohio State, 294. *Chatfield* v. *Wilson*, 28 Verm. 49. *Mahan* v. *Brown*, 13 Wend. 261. *Delhi* v. *Youmans*, 50 Barb. 316. A similar decision was made in *Wheatley* v. *Baugh*, 25 Penn. State, 528; but the suggestion in *Greenleaf* v. *Francis* was approved so far as this, namely, that malicious acts without the justification of any right, that is, acts of a stranger, resulting in like loss or damage, might be actionable; and the case of *Parker* v. *Boston & Maine Railroad*, 3 Cush. 107, was referred to as showing that such loss of advantages previously enjoyed, although not of vested legal right, might be a ground of damages recoverable against one who caused the loss without superior right or justifiable cause.

Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ*, unless some superior right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing, and falls within the principle of the authorities first referred to.

It is a well settled principle, that words, not actionable in themselves as defamatory, will nevertheless subject the party to an action for any special damages that may occur to another thereby. Bac. Ab. Slander, C. The same is true of words spoken in relation to property, or the title thereto, whereby the party is defeated of a sale, or suffers damage in any way. Bac. Ab. Action on the Case, I. Com. Dig. Action on the Case, C. So also, if, by a wrongful claim of title or lien, the owner is prevented from perfecting a sale, or a purchaser from obtaining delivery to himself of goods, an action will lie. *Green* v. *Button*, 2 Cr., M. & R. 707.

In all these cases, the damage for which the recovery is had is not the loss of the value of actual contracts by reason of their non-fulfilment, but the loss of advantages, either of property or of personal benefit, which, but for such interference, the plain-

tiff would have been able to attain or enjoy. Indeed, it has been held that loss by breach of contract, or the wrongful conduct of another than the defendant, would not be recoverable as damages under a *per quod*. *Vicars* v. *Wilcocks*, 8 East, 1. *Morris* v. *Langdale*, 2 B. & P. 284. Bac. Ab. Slander, C.

This doctrine has been doubted, especially in *Lumley* v. *Gye*, 2 El. & Bl. 216, 239, where the case of *Newman* v. *Zachary*, Aleyn, 3, is cited to the contrary. That was an action on the case, maintained for wrongfully representing to the bailiff of a manor that a sheep was an estray, in consequence of which it was wrongfully seized; the reason for the decision being, "because the defendant, by his false practice, hath created a trouble, disgrace and damage to the plaintiff." But the distinction is unimportant in a case like the present, where the damage to the plaintiffs is alleged to have been the direct result of the wrongful conduct of the defendant, and so intended by him; except that it is significant of the point that the existence and defeat of rights by contract are not essential to the maintenance of an action for malicious wrong, when the defendant has no pretext of justifiable cause.

The case of *Green* v. *Button*, 2 Cr., M. & R. 707, is especially in point in this connection. The defendant, by means of a false claim of a lien, and of words discrediting the plaintiff, induced one who had sold goods to the plaintiff to refuse to deliver them, whereby he was injured in his business. The court, alluding to the doubts that had been expressed as to *Vicars* v. *Wilcocks* and *Morris* v. *Langdale*, and without deciding that question, distinguished the case under consideration, on the ground that, the goods not having been paid for, there was no absolute contract to deliver, upon which the plaintiff could have his remedy against the seller; that is, as the delivery was prevented by the wrongful conduct of the defendant, and there was no binding contract broken by the seller, therefore the plaintiff was entitled to recover in his action on the case *per quod*.

In *Gunter* v. *Astor*, 4 J. B. Moore, 12, an action was maintained for enticing away workmen from their employment for a piano manufacturer. They were not hired for a limited time, but worked by the piece. The discussion indicates that damages were considered to be recoverable for the breaking up or disturbance of the business of the plaintiff, whereby he suffered the loss of his usual profits for a long period. The grounds of damage were apparently regarded as altogether independent of the mere loss of any contracts with the workmen.

In *Benton* v. *Pratt*, 2 Wend. 385, it is held that proof of loss by the plaintiff of what he would otherwise have obtained, though there was no contract for it which he could enforce, will sustain an action for the wrongful conduct by which the loss was occasioned.

The difficulty in such cases is to make certain, by proof, that there has been in fact such loss as entitles the party to reparation; but that difficulty is not encountered in the present stage of this case, where all the facts alleged are admitted by the demurrer. The demurrer also admits the absence of any justifiable cause whatever. This decision is made upon the case thus presented, and does not apply to a case of interference by way of friendly advice, honestly given; nor is it in denial of the right of free expression of opinion. We have no occasion now to consider what would constitute justifiable cause.

The second and third counts recite contracts of the plaintiffs with their workmen for the performance of certain work in the manufacture of boots and shoes; and

allege that the defendant, well knowing thereof, with the unlawful purpose of hindering and preventing the plaintiffs from carrying on their business, induced said persons to refuse and neglect to perform their contracts, whereby the plaintiffs suffered great damage in their business.

It is a familiar and well established doctrine of the law upon the relation of master and servant, that one who entices away a servant, or induces him to leave his master, may be held liable in damages therefor, provided there exists a valid contract for continued service, known to the defendant. It has sometimes been supposed that this doctrine sprang from the English statute of laborers, and was confined to menial service. But we are satisfied that it is founded upon the legal right derived from the contract, and not merely upon the relation of master and servant; and that it applies to all contracts of employment, if not to contracts of every description.

In *Hart* v. *Aldridge*, Cowp. 54, it was applied to a case very much like the present.

In *Gunter* v. *Astor*, 4 J. B. Moore, 12, it was applied to the enticing away of workmen not hired for a limited or constant period, but who worked by the piece for a piano manufacturer.

In *Sheperd* v. *Wakeman*, Sid. 79, it was applied to the loss of a contract of marriage by reason of a false and malicious letter claiming a previous engagement.

In *Winsmore* v. *Greenbank*, Willes, 577, the defendant was held liable in damages for unlawfully and unjustly "procuring, enticing and persuading" the plaintiff's wife to remain away from him, whereby he lost the comfort and society of his wife, and the profit and advantage of her fortune.

In *Lumley* v. *Gye*, 2 El. & Bl. 216, the plaintiff had engaged Miss Wagner to sing in his opera, and the defendant knowingly induced her to break her contract and refuse to sing. It was objected that the action would not lie, because her contract was merely executory, and she had never actually entered into the service of the plaintiff; and Coleridge, J., dissented, insisting that the only foundation for such an action was the statute of laborers, which did not apply to service of that character; but after full discussion and deliberation it was held that the action would lie for the damages thus caused by the defendant.

In *Boston Glass Manufactory* v. *Binney*, 4 Pick. 425, which was for inducing workmen, skilled in several departments of glass-making, to leave the employment of the plaintiff, it was not suggested that the defendants would not have been liable if there had been an existing contract between the plaintiff and the workmen.

Upon careful consideration of the authorities, as well as of the principles involved, we are of opinion that a legal cause of action is sufficiently stated in each of the three counts of the declaration. *Demurrer overruled.*

P. E. Aldrich & T. G. Kent, for the plaintiffs.

H. B. Staples (*C. Cowley & F. P. Goulding* with him), for the defendant.

William A. Snow *et ali.* v. Daniel W. Wheeler *et als.*

Worcester. 1873.

113 Mass. 179.

It is not illegal for workmen to form and act as an association for the purpose of protecting themselves against the "encroachments" of their employers, and to agree in furtherance of such object not to teach others their trade unless by consent of the society.

Snow v. Wheeler.

An association of workmen formed for a legal purpose can maintain an action for the recovery of money belonging to them, although in attempting to carry out such purpose they have been guilty of illegal acts.

BILL IN EQUITY brought by the plaintiffs on behalf of themselves and other members of the North Brookfield Lodge No. 28 of the Order of the Knights of St. Crispin against certain persons to compel them to sign an order to withdraw money belonging to the Lodge and deposited in the name of the defendants as trustees. The North Brookfield Lodge No. 28 of the Order of the Knights of St. Crispin was one of the subordinate lodges of the International Grand Lodge of the Order of the Knights of St. Crispin and was a voluntary association of boot and shoe workers.[1]

C. Cowley, for the plaintiffs.

P. E. Aldrich, for the defendants.

COLT, J.[2] This bill is brought on behalf of a voluntary association, the individual members of which are too numerous to be joined as plaintiffs, and it is therefore brought in the name of a few, for themselves and all the other members. *Birmingham* v. *Gallagher*, 112 Mass. 190. It is heard upon the pleadings and master's report.

The individuals named as defendants were members of the association, and received its funds from the treasurer as a committee chosen to deposit the same for safe keeping in the bank, which is named as a co-defendant in the bill. The money was deposited in their names, as trustees, and they now refuse to restore it to the control of the association — the defendant bank refusing to pay without an order signed by the trustees, but submitting itself to the decree of the court.

The only question before us is, whether upon the facts stated in the master's report, and contained in the documents referred to, the trust set forth must have been assumed by the defendants for an illegal purpose. The plaintiffs are clearly entitled to recover their own money thus detained by parties who received it in a fiduciary capacity, unless it appears that the money was delivered to them, or must be held when recovered by the plaintiffs, for a purpose immoral, illegal or contrary to public policy.

The object and purposes of the association which the plaintiffs represent are shown by the constitution and by-laws of the lodge, which are made part of the case; these are subscribed to by each member at the time of his admission, with an additional agreement "not to teach or cause to be taught any new hand any part or parts of the boot or shoe trade without the permission of the lodge of which I am a member." Its members are wholly composed of individuals employed as workmen in the manufacture of boots and shoes, but it does not include proprietors or their foremen.

It is insisted that the agreements thus established between the members of the order are in unlawful restraint of trade, and therefore illegal, as being against public policy. But in the opinion of the court the point is not well taken. In the relations existing between labor and capital, the attempt by co-operation on the one side to increase wages by diminishing competition, or on the other to increase the profits due to capital, is within certain limits lawful and proper. It ceases to be so when unlawful coercion is employed to control the freedom of the individual in disposing of his labor or capital. It is not easy to give a definition which shall include every form of such coercion; it is enough that in the compact before us there is no evidence of any purpose to use such unlawful means in any form.

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[1] For the statement of facts this brief summary has been substituted.
[2] This case was argued in writing and considered by all the judges.

In *Walker* v. *Cronin*, 107 Mass. 555, 564, it is said that "every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition or the exercise of like rights by others, it is *damnum absque injuriâ*."

In *Carew* v. *Rutherford*, 106 Mass. 1, 14, it is said, "Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can." "He may refuse to deal with any man or class of men. And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions." And in *Commonwealth* v. *Hunt*, 4 Met. 111, 134, Shaw, C.J., declares that the legality of such association will depend upon the means to be used for the accomplishment of its objects and whether they be innocent or otherwise.

In the case at bar there is no evidence afforded by the documents submitted to us that the purposes of this association are unlawful by the rule stated. Unlawful coercion certainly does not appear to be intended. And the right of the members to instruct whom they choose in the mysteries of their trade cannot be denied. The case presented is not one where there is evidence to justify us in finding that the objects and purposes of the association are fraudulently and colorably declared as a cover for a secret unlawful agreement of its members. It will be time enough to deal with such a case when it arises.

In this view, it is not necessary critically to examine the instances of alleged illegal conduct which it is said are found upon the records of the association, or to inquire whether they amount to illegal restraint of that freedom in trade which the law secures to all, because specific wrongful acts cannot be shown to defeat the plaintiffs' claim, unless it be also shown that such acts come within the scope and purpose of the organization. Each act of wrong, outside the declared and real purpose of the lodge, stands by itself, to be answered for only by those who join in its perpetration.

Decree for the plaintiffs, with costs against the individual defendants only.

Patrick P. Sherry *et ali.* *v.* Charles E. Perkins *et al.*

Essex. April 4, 1888–June 19, 1888.

147 Mass. 212.

Equity — Injunction — Intimidation — Nuisance — Libel.

Banners displayed in front of a person's premises with inscriptions calculated to injure his business and to deter workmen from entering into or continuing in his employment constitute a nuisance which equity will restrain by injunction.

Bill in equity alleging that the first-named plaintiff was engaged in the business of manufacturing boots and shoes in Lynn; that there was a voluntary association in Lynn called the Lasters' Protective Union, composed of persons engaged in lasting boots and shoes, of which the first-named defendant was the president, and the other defendant, Charles H. Leach, was the secretary; that a question having arisen as to wages, on January 8, 1887, certain lasters left the plaintiffs' employment, giving as a reason therefor that they did not dare to work for them further on account of the

defendants; that, in order to intimidate others from taking their places and to prevent such lasters from re-engaging in their employment, the defendants, with the assent of the association and out of its moneys, caused to be carried in front of Sherry's factory, by a boy hired for that purpose, a banner bearing the following inscription: "Lasters are requested to keep away from P. P. Sherry's. Per order L. P. U." [1]

The bill further alleged, that, because of such banners, crowds of people gathered in front of the factory when the lasters left their work; that the lasters were injured and threatened with bodily harm if they continued in the plaintiffs' employment; that the banner and the acts of the defendants were part of a scheme to prevent persons from entering the plaintiffs' employment, and that the banner was carried in front of the factory until March 22, 1887, when another banner was substituted with the following inscription: "Lasters on a strike and lasters are requested to keep away from P. P. Sherry's until the present trouble is settled. Per order L. P. U."

The bill also alleged that Sherry had remonstrated with the defendants without effect; that the business carried on by the plaintiffs was a large one, and that the good-will was of considerable value, both of which, if the defendants were permitted to continue, would be seriously injured and destroyed.

The prayer of the bill was, that the defendants might be restrained from making such banners, and from causing them to be similarly carried, and for further relief.

Hearing before C. Allen, J., who found as facts, that members of the Lasters' Protective Union entered into a scheme, by threats and intimidation, to prevent persons in the employment of the plaintiffs as lasters from continuing in such employment, and in like manner to prevent other persons from entering into such employment as lasters; that the defendants participated in this scheme; that the use of the banners was a part of the scheme; that the first banner was carried from January 8, 1887, to March 22, 1887, and the second banner from March 22, 1887, to the time of the hearing; and that the plaintiffs have been and are injured in their business and property thereby; and the judge reported the case for the consideration of the full court.

J. R. Baldwin, for the defendants.

R. Lund & F. Hurlburt (*T. M. Osborne* with them), for the plaintiffs.

W. Allen, J. The case finds that the defendants entered, with others, into a scheme, by threats and intimidation, to prevent persons in the employment of the plaintiffs from continuing in such employment, and to prevent others from entering into such employment; that the banners with their inscriptions were used by the defendants as part of the scheme; and that the plaintiffs were thereby injured in their business and property.

The act of displaying banners with devices, as a means of threats and intimidation to prevent persons from entering into or continuing in the employment of the plaintiffs, was injurious to the plaintiffs, and illegal at common law and by statute. Pub. Sts. c. 74, § 2. *Walker* v. *Cronin*, 107 Mass. 555. We think that the plaintiffs are not restricted to their remedy by an action at law, but are entitled to relief by injunction. The acts and the injury were continuous. The banners were used more than three months before the filing of the plaintiffs' bill, and continued to be used at the time of the hearing. The injury was to the plaintiffs' business, and adequate remedy could not be given by damages in a suit at law.

The wrong is not, as argued by the defendants' counsel, a libel upon the plaintiffs'

[1] This statement has been substituted for the first paragraph of the opinion.

business. It is not found that the inscriptions upon the banners were false, nor do they appear to have been in disparagement of the plaintiffs' business. The scheme in pursuance of which the banners were displayed and maintained was to injure the plaintiffs' business, not by defaming it to the public, but by intimidating workmen, so as to deter them from keeping or making engagements with the plaintiffs. The banner was a standing menace to all who were or wished to be in the employment of the plaintiffs, to deter them from entering the plaintiffs' premises. Maintaining it was a continuous unlawful act, injurious to the plaintiffs' business and property, and was a nuisance such as a court of equity will grant relief against. *Gilbert* v. *Mickle*, 4 Sandf. Ch. 357. *Springhead Spinning Co.* v. *Riley*, L. R. 6 Eq. 551.

Boston Diatite Co. v. *Florence Manuf. Co.*, 114 Mass. 69, was a case of defamation only. Some of the language in *Springhead Spinning Co.* v. *Riley* has been criticised, but the decision has not been overruled. See *Boston Diatite Co.* v. *Florence Manuf. Co., ubi supra; Prudential Assurance Co.* v. *Knott*, L. R. 10 Ch. 142; *Saxby* v. *Easterbrook*, 3 C. P. D. 339; *Thorley's Cattle Food Co.* v. *Massam*, 14 Ch. D. 763; *Thomas* v. *Williams*, 14 Ch. D. 864; *Day* v. *Brownrigg*, 10 Ch. D. 294; *Gaskin* v. *Balls*, 13 Ch. D. 324; *Hill* v. *Davies*, 21 Ch. D. 798; *Hermann Loog* v. *Bean*, 26 Ch. D. 306.

Decree for the plaintiffs.

Dinah Worthington *et ali. v.* James Waring *et als.*

Bristol. October 25, 1892–December 3, 1892.

157 Mass. 421.

Petition in Equity — Conspiracy — Equity Jurisdiction — Statute.

The remedy in case of a conspiracy which constitutes a misdemeanor at common law is by indictment.

A petition set forth that the petitioners, employees of a mill corporation, left work upon the refusal of their demand for higher wages; that the treasurer and superintendent of the corporation sent the names of the petitioners to the officers of other corporations in the same city on a list called a black list, which informed the officers that the petitioners had left the mill on a strike; and that thereupon the treasurer and superintendent conspired together and with the officers of other mills, and agreed not to employ the petitioners, with intent to compel them either to go without work in the city, or to go back to work for the mill corporation at such wages as that corporation should see fit to pay them. It did not appear by the petition that any of the petitioners had existing contracts for labor with which the treasurer and superintendent interfered. The prayer was that the respondents, the treasurer and superintendent, be restrained from annoying the petitioners and interfering with their rights to earn their livelihood at their trade, and that they be enjoined to withdraw and destroy all black lists or other devices issued by them or their orders mentioning the names of the petitioners. *Held*, that, if the injury constituted a cause of action, the remedy was by an action of tort to be brought by each petitioner separately. *Held, also*, that the only grievance alleged continuing in its nature was the conspiracy not to employ the petitioners, and that there were no approved precedents in equity for enjoining the defendants from continuing such a conspiracy, or for compelling the defendants either to employ the petitioners or to procure employment for them with other persons.

Equity has, in general, no jurisdiction to restrain the commission of crime, or to assess damages for torts already committed. Courts of equity often protect property from threatened injury when the rights of property are equitable, or when, although the rights are legal, the civil and criminal remedies at common law are not adequate. In the case in hand, however, the rights which the petitioners alleged the defendants were violating were personal rights, as distinguished from rights of property.

If this court were of opinion that a suit in equity did not lose its essential characteristics when brought as an action of contract or of tort, under the St. of 1853, c. 371, it seems manifest that an action at law, brought under the St. of 1887, c. 383, by bill or petition with a subpœna, instead of by an original writ, does not lose the essential characteristics of an action at law.

Worthington *v.* Waring.

The intention of the St. of 1887, c. 383, is that each proceeding under it must be treated either as an action at law or as a suit in equity, with the incidents which, by established practice, or by other statutes, attach to the particular action or suit, and that the pleadings and procedure must conform to this view. The provision in § 3, that the court may issue "any writs, orders, injunctions, or other processes necessary, at any stage of the proceedings", adds little or nothing to the powers of the courts under other statutes.

FIELD, C.J. We take the substance of the petition to be that the petitioners were weavers by trade, and had been employed by the Narragansett Mills, a corporation in Fall River, and that they demanded higher wages, which the corporation refused to give; that they then left work, and that the defendants, who were the treasurer and superintendent of the corporation, sent their names to the officers of other mills in Fall River on a list which is called a black list, which informed these officers that the petitioners had left the Narragansett Mills on what is called a strike; and that thereupon the defendants conspired together and with the officers of other mills, and agreed not to employ the petitioners, with intent to compel them either to go without work in Fall River, or to go back to work for the Narragansett Mills at such wages as that corporation should see fit to pay them. It does not appear by the petition that any of the petitioners had existing contracts for labor with which the defendants interfered. The prayer was that the respondents be restrained from annoying the petitioners, and interfering with their rights to earn their livelihood at their trade in Fall River, and that they be enjoined to withdraw and destroy all black lists or other devices issued by them or their orders mentioning the names of the petitioners.

If the petition sets forth such a conspiracy as constitutes a misdemeanor at common law, on which we express no opinion, the remedy is by indictment. If the injury which had been received by the petitioners at the time the petition was filed constitutes a cause of action, on which we express no opinion, the remedy is by an action of tort, to be brought by each petitioner separately. The only grievance alleged which is continuing in its nature is the conspiracy not to employ the petitioners, and there are no approved precedents in equity for enjoining the defendants from continuing such a conspiracy, or for compelling the defendants either to employ the petitioners or to procure employment for them with other persons. See *Boston Diatite Co.* v. *Florence Manuf. Co.*, 114 Mass. 69; *Raymond* v. *Russell*, 143 Mass. 295; *Smith* v. *Smith*, 148 Mass. 1; *Carleton* v. *Rugg*, 149 Mass. 550; *Workman* v. *Smith*, 155 Mass. 92. It is plain, however, that the petition was drawn with a view to obtain some equitable relief. It is well known that equity has, in general, no jurisdiction to restrain the commission of crimes, or to assess damages for torts already committed. Courts of equity often protect property from threatened injury when the rights of property are equitable, or when, although the rights are legal, the civil and criminal remedies at common law are not adequate, but the rights which the petitioners allege the defendants were violating, at the time the petition was filed, are personal rights, as distinguished from rights of property.

The counsel for the petitioners contends that the petition can be maintained under St. of 1887, c. 383, and it has been suggested that this suit is partly an action at law and partly a suit in equity, and that, if it cannot be maintained as either the one or the other, it can be maintained under this statute, as partaking somewhat of the nature of both. This statute has been often referred to at the bar as one the meaning of which is not clear, and it becomes necessary to consider it. An examination of it shows that it relates solely to procedure; that it does not purport to change the substantive law,

or to create any new cause of action either at law or in equity, or any new kind of relief either legal or equitable, or to change the jurisdiction of the two courts which are mentioned in the first section. It is provided in the fourth section that "Nothing in this act shall be construed to . . . extend or limit the power or jurisdiction of the court in proceedings at law or in equity, except as herein expressly provided," and no extension of the power or jurisdiction of either of the courts mentioned is expressly provided for in the statute, unless the addition of a new original process to be used in civil actions at law, made by the first section, is such an extension. The first section, so far as it relates to suits in equity, is taken from Pub. Sts. c. 151, §§ 1, 5, 6. See St. 1880, c. 37; St. 1883, c. 223, §§ 1, 11. Cases in equity under pre-existing statutes could be commenced by a bill or petition with a writ of subpœna, or by an original writ with a bill or petition, or with a declaration in an action of contract or tort praying relief in equity, inserted in it. But civil actions at law, with some exceptions, could be commenced only by an original writ. Pub. Sts. c. 161, § 13, *et seq.* The first section of St. of 1887, c. 383, permits civil actions at law, except replevin, to be commenced by a bill or petition which is in the nature of a declaration, and by the service of a subpœna which is in the nature of a writ of original summons. With this exception, the statute does not purport to change the law relating to pleadings, nor to abolish the distinction between legal and equitable rights or remedies. The second section provides that "All provisions of law relating to pleadings shall apply to such proceedings so far as the same are applicable." This is not very intelligible as a statement of what provisions were considered by the Legislature to be applicable, but it was probably inserted for the purpose of excluding any inference that the statute was intended to abolish the established forms of pleading. The Pub. Sts. c. 167, and other well known statutes, contain elaborate provisions regulating pleading and procedure in actions at law, and there is no intimation in St. of 1887, c. 383, that these provisions were intended to be repealed, and they are not inconsistent with any of the provisions of that statute, except that a bill or petition with a subpœna may be used instead of a common law writ and a declaration. The Pub. Sts. c. 151, the St. of 1883, c. 223, and other statutes, contain elaborate provisions regulating the pleading and procedure in suits in equity, and there is no intimation in the statute of 1887 that these provisions were intended to be repealed, and they are all consistent with the provisions of that statute. The Legislature could, of course, abolish all distinctions between actions at law and suits in equity, and adopt one form of procedure for all actions; but such a radical change is not to be inferred from a few general words of doubtful import, such as are contained in the third section of this statute. By the Revised Statutes suits in equity were to be commenced by bill with a subpœna, or by a bill inserted in a writ of original summons, with or without an order for the attachment of property; Rev. Sts. c. 90, § 117; c. 107, § 22; and the Supreme Judicial Court had power "to make and award all such judgments, decrees, orders, and injunctions, to issue all such executions and other writs and processes, and to do all such other acts as may be necessary or proper to carry into full effect all the powers which are or may be given to them by the laws of the Commonwealth." Rev. Sts. c. 81, §§ 5, 6, 9. The St. of 1853, c. 371, was entitled "An act giving equitable remedies in suits at law," and the principal subjects of equity jurisdiction were in effect divided in the first and second sections into two classes, and it was provided in § 1, that all suits upon one class of subjects "shall be by action of contract, setting forth the facts and circumstances of the case, so far as may be necessary, and praying for relief in

equity;" and in § 2, that all suits upon the other class "shall be by action of tort, in which the plaintiff, in addition to his claim for damages, may pray for relief in equity." The Supreme Judicial Court was given exclusive jurisdiction of the suits, and empowered, "as well in term time as vacation," to "make and award all such decrees, judgments, orders, and injunctions; and issue all such executions and other writs and processes, and do all such other acts, as may be necessary or proper to carry into full effect the power to grant such relief." The St. of 1855, c. 194, § 2, provided that, "When relief is sought in equity, the material facts and circumstances relied on shall be stated with brevity, omitting all immaterial and irrelevant matter, either in the form of a bill, or petition to the court, or in a declaration in an action of contract or tort." The St. of 1856, c. 38, § 2, provided that "Suits in equity may be commenced by bill, or by writ of attachment." The substance of these statutes was incorporated in the Gen. Sts. c. 113, §§ 1 and 3, and is now contained in the Pub. Sts. c. 151, §§ 1 and 5. The Pub. Sts. c. 153, § 3, provides that the Supreme Judicial and the Superior Courts "may make and award judgments, decrees, orders, and injunctions, and shall issue all writs and processes necessary or proper to carry into effect the powers granted to them; and when no form for any such writ or process is prescribed, the court shall frame one in conformity with the principles of law and the usual course of proceedings in the courts of this Commonwealth." See Pub. Sts. c. 151, § 1; St. 1883, c. 223, § 1.

The decisions of this court upon the effect of St. of 1853, c. 371, which provided in substance that suits in equity should be in form either an action of contract or of tort, show that the court did not construe that statute as abolishing the essential distinctions between legal and equitable suits, or legal and equitable remedies, and that, under that statute, a suit must be either an action at law or a suit in equity, and not both one and the other, or partly one and partly the other. *Darling* v. *Roarty*, 5 Gray, 71. *Winslow* v. *Otis*, 5 Gray, 360. *Topliff* v. *Jackson*, 12 Gray, 565. *Irvin* v. *Gregory*, 13 Gray, 215. *Harvey* v. *DeWitt*, 13 Gray, 536. *Crane v. Adams*, 16 Gray, 542. *Stockbridge Iron Co.* v. *Cone Iron Works*, 99 Mass. 468. In *Irvin* v. *Gregory*, 13 Gray, 215, 217, the court say: "The suit is in form an action at law, praying relief in equity; and as specific performance cannot be had by a judgment at law, but may be afforded in equity, we regard this action, by force of the St. of 1853, as a suit in equity, and that rules and principles of equity are applicable to it." *Harvey* v. *DeWitt*, 13 Gray, 536, 537, was an action of contract in three counts, and in the third count the plaintiff prayed for relief in equity. The court say that the action cannot be maintained. "It attempts to combine, in one suit, matters purely of law, and matters in equity. It cannot be maintained as a suit in equity; because it is apparent that, as to the claim in the first count at least, the plaintiff, if he has any remedy, has a plain, adequate and complete remedy at law. Nor can it be maintained as a suit at law; because it was brought originally in this court, without an affidavit stating that the amount sought to be recovered exceeded three hundred dollars. St. 1840, c. 87, § 1." *Stockbridge Iron Co.* v. *Cone Iron Works* was an action of tort, praying for relief in equity, brought in the Supreme Judicial Court, and there was no affidavit that the damage demanded exceeded one thousand dollars, as provided by the Gen. Sts. c. 112, § 6. The court say: "The prayer for relief gives jurisdiction of the action, and therefore no affidavit is necessary. Its character is that of a suit in equity." If this court were of opinion that a suit in equity did not lose its essential characteristics when brought as an action of contract or of tort under St. of 1853, c. 371, it seems manifest that an action at law brought under St. of 1887, c. 383, by bill or petition

with a subpœna, instead of by an original writ, does not lose the essential characteristics of an action at law.

Some of the consequences of holding that the distinctions between equitable and legal suits were intended to be abolished by the statute of 1887, may be briefly considered. The Supreme Judicial Court has no jurisdiction over actions of tort, and only a very limited jurisdiction over actions of contract, dependent upon the amount of the damages demanded, to which the plaintiff, or some one in his behalf, must make oath. The Superior Court has a general jurisdiction over civil actions at law, when the debt or damages claimed exceed one hundred dollars, and concurrent jurisdiction in equity with the Supreme Judicial Court over most, but not all, suits in equity. It could not have been intended by the statute of 1887 that an action at law to recover twenty dollars might be brought in the Supreme Judicial Court by bill or petition, or that all actions of tort might be brought in that court in the same manner. Whether brought by a bill or petition, or by a writ and declaration, they are still actions at law, in distinction from suits in equity, and the provisions which determine the jurisdiction of courts according to this distinction must still be in force. The system of pleading and procedure in actions at law, and in suits in equity, are different in important respects, and substantial rights depend upon the question whether any particular suit is one or the other. If, on the face of the papers, it appears that the court has no jurisdiction of the proceeding, it may be dismissed on motion, and whether the court has jurisdiction may depend upon the question whether it is an action at law or a suit in equity. In an action at law either party has a right to a trial by jury, if seasonably demanded; but it has been held that, in a suit in equity, the plaintiff has not such a right, and that the defendant has not, except in those cases in which the constitution secures to him the right to a jury trial. Issues for a jury are usually framed in equity, in the discretion of the court. Suits in equity are often sent to masters, and actions at law to auditors, and the effect of the report in one case is not the same as in the other. A judgment at law for the payment of money is enforced by an execution, and the rights of a poor debtor arrested on execution at law are carefully provided for by statute; but although a court of equity may enforce a decree for the payment of money by issuing an execution in form as at common law under authority of the statutes, it may also enforce it by an attachment for contempt, and thus affect the rights of a debtor to be discharged under the statutes relating to the relief of poor debtors. Provisions for appeal to the full court are, in some important respects, different in suits in equity from those in actions at law. These examples show the importance of determining whether any particular civil proceeding is an action at law or a suit in equity.

The third section of the statute of 1887 must be construed with reference to the remainder of the statute, and to the provisions in force when the statute was passed, relating to pleading and procedure. As we think it plain that the statute was not intended to change generally the laws relating to pleading and procedure, or to abolish the distinction between legal and equitable proceedings, or to create new causes of action or new kinds of relief, this section must have a very limited scope. Under pre-existing statutes, courts of equity have the right to issue "all general and special writs and processes required in proceedings in equity to courts of inferior jurisdiction, corporations, and persons, when necessary to secure justice and equity." St. 1883, c. 223, § 1. Pub. Sts. c. 151, § 1. The Supreme Judicial Court and the Superior Court,

both at law and in equity, have authority to "issue all writs and processes necessary or proper to carry into effect the powers granted to them." Pub. Sts. c. 153, § 3. The statutes have expressly authorized in certain cases the use of certain legal processes by courts of equity, and of certain equitable processes by courts of law, of which examples may be found in Pub. Sts. c. 151, § 29; c. 179, § 12; c. 180, § 6. Certain equitable defences in actions at law are permitted by St. of 1883, c. 223, § 14, and in certain actions at law a claimant is permitted to appear, and the action becomes substantially a suit of interpleader. St. 1886, c. 281. The provisions are ample for amending actions at law into suits in equity, and suits in equity into actions at law. St. 1883, c. 223, § 17. Pub. Sts. c. 167, § 43. By St. 1885, c. 384, terms have been abolished in the Supreme Judicial Court and the Superior Court, and these courts can issue any proper process at any time. Courts of equity, when they take jurisdiction of a bill, sometimes go on and decide, as incidental to the equitable matter contained in it, controversies which, standing alone, could only be determined in an action at law, but the third section of St. of 1887, c. 383, cannot be held to relate to this subject. A defendant, either in an action at law or in a suit in equity, is entitled to affirmative relief against the plaintiff only in well defined cases, and the pleadings must set forth his claim according to the established practice in law or equity. In certain suits in equity, both the plaintiff and the defendant may be entitled to relief, as, for instance, in suits to settle the affairs of a partnership, and suits for the foreclosure or the redemption of a mortgage. The relief which the court is authorized to give by St. of 1887, c. 383, § 3, "as the nature of the case may require," must be determined by the law as established, because the section does not purport to authorize forms of relief previously unknown to either law or equity. The only word which really occasions any doubt of the meaning of this third section is the word "both" in the first clause; but, in view of all the provisions of this statute, it must be taken that this refers to cases in which, by the customary practice, or the provisions of other statutes, both legal and equitable relief can be given in the same suit. We think that the intention of the statute of 1887 is, that each proceeding under it must be treated either as an action at law or as a suit in equity, with the incidents which, by established practice, or by other statutes, attach to the particular action or suit, and that the pleadings and procedure must conform to this view. The provision that the court may issue "any writs, orders, injunctions, or other processes necessary, at any stage of the proceedings," would seem to add little or nothing to the powers of the courts under other statutes. The present petition cannot be maintained, either as an action at law or a suit in equity. *Petition dismissed.*

H. A. Dubuque, for the petitioners.

A. J. Jennings (*A. S. Phillips* with him), for the respondents.

Frederick O. Vegelahn *v.* George M. Guntner *et als.*

Suffolk. March 24, 1896–October 26, 1896.

167 Mass. 92.

Conspiracy to interfere with Person's Business — Maintaining Patrol in Front of Premises — Intimidation — Nuisance — Equity — Injunction.

Maintaining a patrol of two men changed every hour in front of a person's premises, as part of a conspiracy to interfere with his business until he shall adopt a certain schedule of prices, in combination with persuasion, social pressure, and threats of personal injury or unlawful

Vegelahn *v.* Guntner.

harm conveyed to persons employed by him or seeking such employment, amounts to intimidation, and constitutes a private nuisance which equity will restrain by injunction; and such injunction will issue, although the acts enjoined may be criminal, and are designed only to affect persons who are not bound by contract to enter into or to continue in the employment. FIELD, C.J., & HOLMES, J., dissenting from an injunction against (1) the patrol dissociated from threats of physical injury to person or property, and (2) any combined attempt to injure the business, although without such threats and irrespective of the means employed.

BILL IN EQUITY, filed December 7, 1894, against fourteen individual defendants and two trades unions, alleging that the plaintiff was engaged in business as a manufacturer of furniture, in the premises numbered 141, 143, 145, and 147 North Street, in Boston, and employed a large number of men in carrying on his business there; that there were in Boston certain associations named as defendants, which were composed of persons engaged in similar occupations to that of the individual defendants, of whom the defendant Guntner was agent; that on or about October 11, 1894, the plaintiff received a communication from the defendant unions as follows: "Your upholsterers do hereby kindly submit enclosed Price-list for your earnest consideration, the object is to institute a more equal competition this we would ask to go into effect on and after Oct. 29, 1894, and we kindly request that after said date Nine hours constitute a day's work;" that on or about November 21, 1894, without notice and without warning, all of the individual defendants, except Guntner, struck, and left the plaintiff's employment and premises in a body; that since that date the plaintiff had endeavored to carry on his business, and to employ other men to fill the places of the defendants, but the defendants, their agents and servants, had wilfully and maliciously patrolled the streets in front of his premises in groups and squads continuously, and had used indecent language and epithets to those working in his employ in the places made vacant by the defendants; that they had wilfully and maliciously blocked up the doorway and entrance of his premises, and there intercepted, interfered with, and intimidated persons who desired to visit the premises for the purpose of engaging in the employment of the plaintiff, and for the purpose of trading with the plaintiff; that they had wilfully and maliciously intimidated and threatened the persons whom he had employed to take their places with bodily harm if they continued in the plaintiff's employment, and had caused certain new men so employed to leave his employment; that they had notified the insurance companies that the property there insured was in danger, and had attempted to effect a cancellation of the insurance carried by the plaintiff on his stock of goods; that they had followed the delivery team of the plaintiff in divers places and cities, and had been to several customers of the plaintiff and threatened to injure them and their business if they continued to trade with the plaintiff, and generally to injure the plaintiff in his said business, and to prevent his continuing to carry on his business; that the defendants, their agents and servants, had been and were a nuisance and obstruction to persons travelling on the street, and to persons in the employ of the plaintiff, and to persons intending to trade with the plaintiff at his premises; that all acts of the defendants were a part of a scheme to prevent persons from entering the employment of the plaintiff and from continuing in his employment; that the business carried on by the plaintiff was a large one, and the good will was of considerable value, in both of which the plaintiff had already been injured; and that, if the defendants were permitted to continue their acts, both the business and the good will would be further seriously injured and destroyed.

The prayer of the bill was that the defendants might be restrained from visiting, or causing other persons to visit, the premises occupied by the plaintiff, or from stopping or remaining in the vicinity of the premises for the purpose of interfering with the workmen of the plaintiff or any person who might desire to enter his employment, or by intimidation, insults, or threats from inducing any person in the employment of the plaintiff to leave, or any person to refrain from entering into, such employment; and from any and all acts within or in the immediate vicinity of the plaintiff's premises which would tend to obstruct him in the transaction of his business therein, or intimidate or annoy the workmen of the plaintiff as they enter into or depart from the premises, and from annoying and intimidating persons who might desire to work therein; and for further relief.

The following decree was entered at a preliminary hearing upon the bill: "This cause came on to be heard upon the plaintiff's motion for a temporary injunction; and after due hearing, at which the several defendants were represented by counsel, it is ordered, adjudged, and decreed that an injunction issue *pendente lite*, to remain in force until the further order of this court, or of some justice thereof, restraining the respondents and each and every of them, their agents and servants, from interfering with the plaintiff's business by patrolling the sidewalk or street in front or in the vicinity of the premises occupied by him, for the purpose of preventing any person or persons who now are or may hereafter be in his employment, or desirous of entering the same, from entering it, or continuing in it; or by obstructing or interfering with such persons, or any others, in entering or leaving the plaintiff's said premises; or by intimidating, by threats or otherwise, any person or persons who now are or may hereafter be in the employment of the plaintiff, or desirous of entering the same, from entering it, or continuing in it; or by any scheme or conspiracy among themselves or with others, organized for the purpose of annoying, hindering, interfering with, or preventing any person or persons who now are or may hereafter be in the employment of the plaintiff, or desirous of entering the same, from entering it, or from continuing therein."

Hearing upon the bill and answers before Holmes, J., who reported the case for the consideration of the full court, as follows:

"The facts admitted or proved are that, following upon a strike of the plaintiff's workmen, the defendants have conspired to prevent the plaintiff from getting workmen, and thereby to prevent him from carrying on his business unless and until he will adopt a schedule of prices which has been exhibited to him, and for the purpose of compelling him to accede to that schedule, but for no other purpose. If he adopts that schedule he will not be interfered with further. The means adopted for preventing the plaintiff from getting workmen are, (1) in the first place, persuasion and social pressure. And these means are sufficient to affect the plaintiff disadvantageously, although it does not appear, if that be material, that they are sufficient to crush him. I ruled that the employment of these means for the said purpose was lawful, and for that reason refused an injunction against the employment of them. If the ruling was wrong, I find that an injunction ought to be granted.

"(2) I find also, that, as a further means for accomplishing the desired end, threats of personal injury or unlawful harm were conveyed to persons seeking employment or employed, although no actual violence was used beyond a technical battery, and

although the threats were a good deal disguised, and express words were avoided. It appeared to me that there was danger of similar acts in the future. I ruled that conduct of this kind should be enjoined.

"The defendants established a patrol of two men in front of the plaintiff's factory, as one of the instrumentalities of their plan. The patrol was changed every hour, and continued from half-past six in the morning until half-past five in the afternoon, on one of the busy streets of Boston. The number of men was greater at times, and at times showed some little inclination to stop the plaintiff's door, which was not serious, but seemed to me proper to be enjoined. The patrol proper at times went further than simple advice, not obtruded beyond the point where the other person was willing to listen, and conduct of that sort is covered by (2) above, but its main purpose was in aid of the plan held lawful in (1) above. I was satisfied that there was probability of the patrol being continued if not enjoined. I ruled that the patrol, so far as it confined itself to persuasion and giving notice of the strike, was not unlawful, and limited the injunction accordingly.

"There was some evidence of persuasion to break existing contracts. I ruled that this was unlawful, and should be enjoined.

"I made the final decree appended hereto. If, on the foregoing facts, it ought to be reversed or modified, such decree is to be entered as the full court may think proper; otherwise, the decree is to stand."

The final decree was as follows: "This cause came on to be heard, and was argued by counsel; and thereupon, on consideration thereof, it is ordered, adjudged, and decreed that the defendants, and each and every of them, their agents and servants, be restrained and enjoined from interfering with the plaintiff's business by obstructing or physically interfering with any persons in entering or leaving the plaintiff's premises numbered 141, 143, 145, 147 North Street in said Boston, or by intimidating, by threats, express or implied, of violence or physical harm to body or property, any person or persons who now are or hereafter may be in the employment of the plaintiff, or desirous of entering the same, from entering or continuing in it, or by in any way hindering, interfering with, or preventing any person or persons who now are in the employment of the plaintiff from continuing therein, so long as they may be bound so to do by lawful contract."

The case was argued at the bar in March, 1896, and afterwards was submitted on briefs to all the judges.

T. H. Russell, for the defendants.

E. B. Hale, for the plaintiff.

Allen, J. The principal question in this case is whether the defendants should be enjoined against maintaining the patrol. The report shows that, following upon a strike of the plaintiff's workmen, the defendants conspired to prevent him from getting workmen, and thereby to prevent him from carrying on his business, unless and until he should adopt a certain schedule of prices. The means adopted were persuasion and social pressure, threats of personal injury or unlawful harm conveyed to persons employed or seeking employment, and a patrol of two men in front of the plaintiff's factory, maintained from half past six in the morning till half past five in the afternoon, on one of the busiest streets of Boston. The number of men was greater at times, and at times showed some little disposition to stop the plaintiff's

door. The patrol proper at times went further than simple advice, not obtruded beyond the point where the other person was willing to listen; and it was found that the patrol would probably be continued, if not enjoined. There was also some evidence of persuasion to break existing contracts.

The patrol was maintained as one of the means of carrying out the defendants' plan, and it was used in combination with social pressure, threats of personal injury or unlawful harm, and persuasion to break existing contracts. It was thus one means of intimidation indirectly to the plaintiff, and directly to persons actually employed, or seeking to be employed, by the plaintiff, and of rendering such employment unpleasant or intolerable to such persons. Such an act is an unlawful interference with the rights both of employer and of employed. An employer has a right to engage all persons who are willing to work for him at such prices as may be mutually agreed upon; and persons employed or seeking employment have a corresponding right to enter into or remain in the employment of any person or corporation willing to employ them. These rights are secured by the Constitution itself. *Commonwealth* v. *Perry*, 155 Mass. 117. *People* v. *Gillson*, 109 N. Y. 389. *Braceville Coal Co.* v. *People*, 147 Ill. 66, 71. *Ritchie* v. *People*, 155 Ill. 98. *Low* v. *Rees Printing Co.*, 41 Neb. 127. No one can lawfully interfere by force or intimidation to prevent employers or persons employed or wishing to be employed from the exercise of these rights. In Massachusetts, as in some other States, it is even made a criminal offence for one by intimidation or force to prevent or seek to prevent a person from entering into or continuing in the employment of a person or corporation. Pub. Sts. c. 74, § 2. Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there also may be a moral intimidation which is illegal. Patrolling or picketing, under the circumstances stated in the report, has elements of intimidation like those which were found to exist in *Sherry* v. *Perkins*, 147 Mass. 212. It was declared to be unlawful in *Regina* v. *Druitt*, 10 Cox C. C. 592; *Regina* v. *Hibbert*, 13 Cox C. C. 82; and *Regina* v. *Bauld*, 13 Cox C. C. 282. It was assumed to be unlawful in *Trollope* v. *London Building Trades Federation*, 11 T. L. R. 228, though in that case the pickets were withdrawn before the bringing of the bill. The patrol was an unlawful interference both with the plaintiff and with the workmen, within the principle of many cases, and, when instituted for the purpose of interfering with his business, it became a private nuisance. See *Carew* v. *Rutherford*, 106 Mass. 1; *Walker* v. *Cronin*, 107 Mass. 555; *Barr* v. *Essex Trades Council*, 8 Dick. 101; *Murdock* v. *Walker*, 152 Penn. St. 595; *Wick China Co.* v. *Brown*, 164 Penn. St. 449; *Cœur d' Alene Consolidated & Mining Co.* v. *Miners' Union*, 51 Fed. Rep. 260; *Temperton* v. *Russell* [1893], 1 Q. B. 715; *Flood* v. *Jackson*, 11 L. T. R. 276; *Wright* v. *Hennessey*, a case before Baron Pollock, 52 Alb. L. J. 104; *Judge* v. *Bennett*, 36 W. R. 103; *Lyons* v. *Wilkins* [1896], 1 Ch. 811.

The defendants contend that these acts were justifiable, because they were only seeking to secure better wages for themselves by compelling the plaintiff to accept their schedule of wages. This motive or purpose does not justify maintaining a patrol in front of the plaintiff's premises, as a means of carrying out their conspiracy. A combination among persons merely to regulate their own conduct is within allowable competition, and is lawful, although others may be indirectly affected thereby. But a combination to do injurious acts expressly directed to another, by way of intimidation or constraint, either of himself or of persons employed or seeking to be employed by

him, is outside of allowable competition, and is unlawful. Various decided cases fall within the former class, for example: *Worthington* v. *Waring*, 157 Mass. 421; *Snow* v. *Wheeler*, 113 Mass. 179; *Bowen* v. *Matheson*, 14 Allen, 499; *Commonwealth* v. *Hunt*, 4 Met. 111; *Heywood* v. *Tillson*, 75 Maine, 225; *Cote* v. *Murphy*, 159 Penn. St. 420; *Bohn Manuf. Co.* v. *Hollis*, 54 Minn. 223; *Mogul Steamship Co.* v. *McGregor* [1892], A. C. 25; *Curran* v. *Treleaven* [1891], 2 Q. B. 545, 561. The present case falls within the latter class.

Nor does the fact that the defendants' acts might subject them to an indictment prevent a court of equity from issuing an injunction. It is true that ordinarily a court of equity will decline to issue an injunction to restrain the commission of a crime; but a continuing injury to property or business may be enjoined, although it may also be punishable as a nuisance or other crime. *Sherry* v. *Perkins*, 147 Mass. 212. *In re Debs*, 158 U. S. 564, 593, 599. *Baltimore & Potomac Railroad* v. *Fifth Baptist Church*, 108 U. S. 317, 329. *Cranford* v. *Tyrrell*, 128 N. Y. 341, 344. *Gilbert* v. *Mickle*, 4 Sandf. Ch. 357. *Mobile* v. *Louisville & Nashville Railroad*, 84 Ala. 115, 126. *Arthur* v. *Oakes*, 63 Fed. Rep. 310. *Toledo, Ann Arbor, & North Michigan Railway* v. *Pennsylvania Co.*, 54 Fed. Rep. 730, 744. *Emperor of Austria* v. *Day*, 3 DeG., F. & J. 217, 239, 240, 253. *Hermann Loog* v. *Bean*, 26 Ch. D. 306, 314, 316, 317. *Monson* v. *Tussaud* [1894], 1 Q. B. 671, 689, 690, 698.

A question is also presented whether the court should enjoin such interference with persons in the employment of the plaintiff who are not bound by contract to remain with him, or with persons who are not under any existing contract, but who are seeking or intending to enter into his employment. A conspiracy to interfere with the plaintiff's business by means of threats and intimidation, and by maintaining a patrol in front of his premises in order to prevent persons from entering his employment, or in order to prevent persons who are in his employment from continuing therein, is unlawful, even though such persons are not bound by contract to enter into or to continue in his employment; and the injunction should not be so limited as to relate only to persons who are bound by existing contracts. *Walker* v. *Cronin*, 107 Mass. 555, 565. *Carew* v. *Rutherford*, 106 Mass. 1. *Sherry* v. *Perkins*, 147 Mass. 212. *Temperton* v. *Russell*, [1893], 1 Q. B. 715, 728, 731. *Flood* v. *Jackson*, 11 L. T. R. 276.

In the opinion of a majority of the court the injunction should be in the form originally issued. *So ordered.*

FIELD, C.J. [*dissenting*]. The practice of issuing injunctions in cases of this kind is of very recent origin. One of the earliest authorities in the United States for enjoining in equity acts somewhat like those alleged against the defendants in the present case is *Sherry* v. *Perkins*, 147 Mass. 212, decided in 1888. It was found as a fact, in that case, that the defendants entered into a scheme by threats and intimidation to prevent persons in the employment of the plaintiffs as lasters from continuing in such employment, and in like manner to prevent other persons from entering into such employment as lasters; that the use of the banners was a part of the scheme; that the first banner was carried from January 8, 1887, to March 22, 1887, and the second banner from March 22, 1887, to the time of the hearing; and that the plaintiffs were injured in their business and property thereby. The full court say: "The act of displaying banners with devices, as a means of threats and intimidation to prevent persons from entering into or continuing in the employment of the plaintiffs, was injurious to the

plaintiffs, and illegal at common law and by statute. Pub. Sts., c. 74, § 2. *Walker* v. *Cronin*, 107 Mass. 555. . . . The banner was a standing menace to all who were or wished to be in the employment of the plaintiffs, to deter them from entering the plaintiffs' premises. Maintaining it was a continuous unlawful act, injurious to the plaintiffs' business and property, and was a nuisance such as a court of equity will grant relief against. *Gilbert* v. *Mickle*, 4 Sandf. Ch. 357. *Springhead Spinning Co.* v. *Riley*, L. R. 6 Eq. 551."

Of the authorities cited in *Sherry* v. *Perkins*, *Gilbert* v. *Mickle* was a suit in equity by an auctioneer against the mayor of the city of New York, to restrain him and those acting under him from parading, placing, or keeping before the plaintiff's auction rooms a placard as follows: "Strangers, beware of mock auctions." A temporary injunction was issued, but on hearing it was dissolved. Notwithstanding what is said in the opinion of the Vice Chancellor, his conclusion is as follows: "I am satisfied that it is my duty to leave the party to his remedy by an action at law." *Springhead Spinning Co.* v. *Riley* is a well-known decision of Vice Chancellor Malins. The bill prayed that the defendants might be "restrained from printing or publishing any placards or advertisements similar to those already set forth." The defendants had caused to be posted on the walls and other public places in the neighborhood of the plaintiff's works, and caused to be printed in certain newspapers, a notice as follows: "Wanted all well-wishers to the Operative Cotton Spinners, &c., Association, not to trouble or cause any annoyance to the Springhead Spinning Company, Lees, by knocking at the door of their office until the dispute between them and the self-actor minders is finally terminated. By special order. Carrodus, 32, Greaves Street, Oldham." The case was heard upon demurrers. The Vice Chancellor says: "For the reasons I have stated, I overrule these demurrers, because the bill states, and the demurrers admit, acts amounting to the destruction of property." Of that case the court, in *Sherry* v. *Perkins*, say: "Some of the language in *Springhead Spinning Co.* v. *Riley* has been criticised, but the decision has not been overruled." The cases are there cited in which that decision has been doubted or criticised. Of the decision this court, in *Boston Diatite Co.* v. *Florence Manuf. Co.* 114 Mass. 69, say: "The opinions of Vice Chancellor Malins in *Springhead Spinning Co.* v. *Riley*, L. R. 6 Eq. 551, in *Dixon* v. *Holden*, L. R. 7 Eq. 488, and in *Rollins* v. *Hinks*, L. R. 13 Eq. 355, appear to us to be so inconsistent with these authorities [authorities which the court had cited] and with well settled principles, that it would be superfluous to consider whether, upon the facts before him, his decisions can be supported." Much the same language was used by the justices in *Prudential Assurance Co.* v. *Knott*, L. R. 10, Ch. 142, a part of the head-note of which is "*Dixon* v. *Holden* and *Springhead Spinning Company* v. *Riley* overruled." In *Temperton* v. *Russell*, [1893] 1 Q. B. 435, 438, Lindley, L. J., says of the case of *Springhead Spinning Co.* v. *Riley*, that it was overruled by the Court of Appeal in *Prudential Assurance Co.* v. *Knott*.

Since the Judicature Act, however, the courts of England have interfered to restrain by injunction the publication or continued publication of libellous statements, particularly those injuriously affecting the business or property of another, as well as injunctions similar to that in the present case. St. 36 & 37 Vict. c. 66, § 25, subsect. 5, 8. *Monson* v. *Tussaud*, [1894] 1 Q. B. 671, 692. *Lyons* v. *Wilkins*, [1896] 1 Ch. 811, 827. But in the absence of any power given by statute, the jurisdiction of a court

of equity having only the powers of the English High Court of Chancery, does not, I think, extend to enjoining acts like those complained of in the case at bar, unless they amount to a destruction or threatened destruction of property, or an irreparable injury to it.

In England, the rights of employers and employed, with reference to strikes, boycotts, and other similar movements, have not in general been left to be worked out by the courts from common law principles, but statutes from time to time have been passed defining what may and what may not be permitted. The administration of these statutes largely has been through the criminal courts.

As a means of prevention, the remedy given by Pub. Sts., c. 74, § 2, would seem to be adequate where the section is applicable, unless the destruction of or an irreparable injury to property is threatened, and there is the additional remedy of an indictment for a criminal conspiracy at common law if the acts of the defendants amount to that. If the acts complained of do not amount to intimidation or force, it is not in all respects clear what are lawful and what are not lawful at common law. It seems to be established in this Commonwealth, that intentionally and without justifiable cause to entice by persuasion a workman to break an existing contract with his employer, and to leave his employment, is actionable, whether done with actual malice or not. *Walker* v. *Cronin*, 107 Mass. 555. What constitutes justifiable cause remains in some respects undetermined. Whether to persuade a person who is free to choose his employment not to enter into the employment of another person gives a cause of action to such other person, by some courts has been said to depend upon the question of actual malice, and in considering this question of malice it is said that it is important to determine whether the defendant has any lawful interest of his own in preventing the employment, such as that of competition in business. For myself, I have been unable to see that malice is necessarily decisive. I am not convinced that to persuade one man not to enter into the employment of another, by telling the truth to him about such other person and his business, is actionable at common law, whatever the motive may be.

Such persuasion, when accompanied by falsehood about such other person or his business, may be actionable, unless the occasion of making the statements is privileged, and then the question of actual malice may be important. This, I think, is the effect of the decision in *Rice* v. *Albee*, 164 Mass. 88. When one man orally advises another not to enter into a third person's employment, it would, I think, be a dangerous principle to leave his liability to be determined by a jury upon the question of his malice or want of malice, except in those cases where the words spoken were false. In the present case, if the establishment of a patrol is using intimidation or force within the meaning of our statutes, it is illegal and criminal; if it does not amount to intimidation or force, but is carried to such a degree as to interfere with the use by the plaintiff of his property, it may be illegal and actionable, but something more is necessary to justify issuing an injunction; if it is in violation of any ordinance of the city regulating the use of streets, there may be a prosecution for that, and the police can enforce the ordinance; but if it is merely a peaceful mode of finding out the persons who intend to go to the plaintiff's premises to apply for work, and of informing them of the actual facts of the case in order to induce them not to enter into the plaintiff's employment, in the absence of any statute relating to the subject I doubt if it is illegal, and I see no ground for issuing an injunction against it.

As no objection is now made by the defendants to the equitable jurisdiction, I am of opinion, on the facts reported, as I understand them, that the decree entered by Mr. Justice Holmes should be affirmed without modification.

Holmes, J. [*dissenting*]. In a case like the present, it seems to me that, whatever the true result may be, it will be of advantage to sound thinking to have the less popular view of the law stated, and therefore, although when I have been unable to bring my brethren to share my convictions my almost invariable practice is to defer to them in silence, I depart from that practice in this case, notwithstanding my unwillingness to do so in support of an already rendered judgment of my own.

In the first place, a word or two should be said as to the meaning of the report. I assume that my brethren construe it as I meant it to be construed, and that, if they were not prepared to do so, they would give an opportunity to the defendants to have it amended in accordance with what I state my meaning to be. There was no proof of any threat or danger of a patrol exceeding two men, and as of course an injunction is not granted except with reference to what there is reason to expect in its absence, the question on that point is whether a patrol of two men should be enjoined. Again, the defendants are enjoined by the final decree from intimidating by threats, express or implied, of physical harm to body or property, any person who may be desirous of entering into the employment of the plaintiff so far as to prevent him from entering the same. In order to test the correctness of the refusal to go further, it must be assumed that the defendants obey the express prohibition of the decree. If they do not, they fall within the injunction as it now stands, and are liable to summary punishment. The important difference between the preliminary and the final injunction is that the former goes further, and forbids the defendants to interfere with the plaintiff's business "by any scheme . . . organized for the purpose of . . . preventing any person or persons who now are or may hereafter be . . . desirous of entering the [plaintiff's employment] from entering it." I quote only a part, and the part which seems to me most objectionable. This includes refusal of social intercourse, and even organized persuasion or argument, although free from any threat of violence, either express or implied. And this is with reference to persons who have a legal right to contract or not to contract with the plaintiff, as they may see fit. Interference with existing contracts is forbidden by the final decree. I wish to insist a little that the only point of difference which involves a difference of principle between the final decree and the preliminary injunction which it is proposed to restore, is what I have mentioned, in order that it may be seen exactly what we are to discuss. It appears to me that the judgment of the majority turns in part on the assumption that the patrol necessarily carries with it a threat of bodily harm. That assumption I think unwarranted, for the reasons which I have given. Furthermore, it cannot be said, I think, that two men walking together up and down a sidewalk and speaking to those who enter a certain shop do necessarily and always thereby convey a threat of force. I do not think it possible to discriminate, and to say that two workmen, or even two representatives of an organization of workmen, do, — especially when they are, and are known to be, under the injunction of this court not to do so. See Stimson. Handbook to Labor Law, § 60, esp. pp. 290, 298, 299, 300; *Regina* v. *Shepherd*, 11 Cox C. C. 325. I may add, that I think the more intelligent workingmen believe as fully as I do that they no more can be permitted to usurp the State's prerogative of

force than can their opponents in their controversies. But if I am wrong, then the decree as it stands reaches the patrol, since it applies to all threats of force. With this I pass to the real difference between the interlocutory and the final decree.

I agree, whatever may be the law in the case of a single defendant, *Rice* v. *Albee*, 164 Mass. 88, that when a plaintiff proves that several persons have combined and conspired to injure his business, and have done acts producing that effect, he shows temporal damage and a cause of action, unless the facts disclose, or the defendants prove, some ground of excuse or justification. And I take it to be settled, and rightly settled, that doing that damage by combined persuasion is actionable, as well as doing it by falsehood or by force. *Walker* v. *Cronin*, 107 Mass. 555. *Morasse* v. *Brochu*, 151 Mass. 567. *Tasker* v. *Stanley*, 153 Mass. 148.

Nevertheless in numberless instances the law warrants the intentional infliction of temporal damage because it regards it as justified. It is on the question of what shall amount to a justification, and more especially on the nature of the considerations which really determine or ought to determine the answer to that question, that judicial reasoning seems to me often to be inadequate. The true grounds of decision are considerations of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and the general propositions of law which nobody disputes. Propositions as to public policy rarely are unanimously accepted, and still more rarely, if ever, are capable of unanswerable proof. They require a special training to enable any one even to form an intelligent opinion about them. In the early stages of law, at least, they generally are acted on rather as inarticulate instincts than as definite ideas for which a rational defence is ready.

To illustrate what I have said in the last paragraph, it has been the law for centuries that a man may set up a business in a country town too small to support more than one, although he expects and intends thereby to ruin some one already there, and succeeds in his intent. In such a case he is not held to act "unlawfully and without justifiable cause," as was alleged in *Walker* v. *Cronin* and *Rice* v. *Albee*. The reason, of course, is that the doctrine generally has been accepted that free competition is worth more to society than it costs, and that on this ground the infliction of the damage is privileged. *Commonwealth* v. *Hunt*, 4 Met. 111, 134. Yet even this proposition nowadays is disputed by a considerable body of persons, including many whose intelligence is not to be denied, little as we may agree with them.

I have chosen this illustration partly with reference to what I have to say next. It shows without the need of further authority that the policy of allowing free competition justifies the intentional inflicting of temporal damage, including the damage of interference with a man's business, by some means, when the damage is done not for its own sake, but as an instrumentality in reaching the end of victory in the battle of trade. In such a case it cannot matter whether the plaintiff is the only rival of the defendant, and so is aimed at specifically, or is one of a class all of whom are hit. The only debatable ground is the nature of the means by which such damage may be inflicted. We all agree that it cannot be done by force or threats of force. We all agree, I presume, that it may be done by persuasion to leave a rival's shop and come to the defendant's. It may be done by the refusal or withdrawal of various pecuniary advantages which, apart from this consequence, are within the defendant's lawful control. It may be done by the withdrawal [of], or threat to withdraw, such advantages

from third persons who have a right to deal or not to deal with the plaintiff, as a means of inducing them not to deal with him either as customers or servants. *Commonwealth* v. *Hunt*, 4 Met. 111, 132, 133. *Bowen* v. *Matheson*, 14 Allen, 499. *Heywood* v. *Tillson*, 75 Maine, 225. *Mogul Steamship Co.* v. *McGregor*, [1892] A. C. 25.

I pause here to remark that the word "threats" often is used as if, when it appeared that threats had been made, it appeared that unlawful conduct had begun. But it depends on what you threaten. As a general rule, even if subject to some exceptions, what you may do in a certain event you may threaten to do, that is, give warning of your intention to do in that event, and thus allow the other person the chance of avoiding the consequences. So as to "compulsion," it depends on how you "compel." *Commonwealth* v. *Hunt*, 4 Met. 111, 133. So as to "annoyance" or "intimidation." *Connor* v. *Kent*, *Curran* v. *Treleaven*, 17 Cox C. C. 354, 367, 368, 370. In *Sherry* v. *Perkins*, 147 Mass. 212, it was found as a fact that the display of banners which was enjoined was a part of a scheme to prevent workmen from entering or remaining in the plaintiff's employment, "by threats and intimidation." The context showed that the words as there used meant threats of personal violence, and intimidation by causing fear of it.

I have seen the suggestion made that the conflict between employers and employed is not competition. But I venture to assume that none of my brethren would rely on that suggestion. If the policy on which our law is founded is too narrowly expressed in the term free competition, we may substitute free struggle for life. Certainly the policy is not limited to struggles between persons of the same class competing for the same end. It applies to all conflicts of temporal interests.

So far, I suppose, we are agreed. But there is a notion which latterly has been insisted on a good deal, that a combination of persons to do what any one of them lawfully might do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition. But in the general form in which it has been presented and accepted by many courts, I think it plainly untrue, both on authority and on principle. *Commonwealth* v. *Hunt*, 4 Met. 111. *Randall* v. *Hazelton*, 12 Allen, 412, 414. There was a combination of the most flagrant and dominant kind in *Bowen* v. *Matheson* and in the Mogul Steamship Company's case, and combination was essential to the success achieved. But it is not necessary to cite cases; it is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental axioms of society, and even the fundamental conditions of life, are to be changed.

One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way. I am unable to reconcile *Temperton* v. *Russell*, [1893] 1 Q. B. 715, and the cases which follow it, with the Mogul Steamship Company case. But *Temperton* v. *Russell* is not a binding authority here, and therefore I do not think it necessary to discuss it.

If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has to support their interests by argument, persuasion and the bestowal or refusal of those advantages which they otherwise lawfully control. I can remember when many people thought that, apart from violence or breach of contract, strikes were wicked, as organized refusals to work. I suppose that intelligent economists and legislators have given up that notion to-day. I feel pretty confident that they equally will abandon the idea that an organized refusal by workmen of social intercourse with a man who shall enter their antagonist's employ is wrong, if it is dissociated from any threat of violence, and is made for the sole object of prevailing if possible in a contest with their employer about the rate of wages. The fact, that the immediate object of the act by which the benefit to themselves is to be gained is to injure their antagonist, does not necessarily make it unlawful, any more than when a great house lowers the price of certain goods for the purpose, and with the effect, of driving a smaller antagonist from the business. Indeed the question seems to me to have been decided as long ago as 1842 by the good sense of Chief Justice Shaw, in *Commonwealth* v. *Hunt*, 4 Met. 111. I repeat at the end, as I said at the beginning, that this is the point of difference in principle, and the only one, between the interlocutory and the final decree. See *Regina* v. *Shepherd*, 11 Cox C. C. 325; *Connor* v. *Kent*, *Gibson* v. *Lawson*, *Curran* v. *Treleaven*, 17 Cox C. C. 354.

The general question of the propriety of dealing with this kind of case by injunction I say nothing about, because I understand that the defendants have no objection to the final decree if it goes no further, and that both parties wish a decision upon the matters which I have discussed.

Paul J. Plant *et ali.* v. Henry K. Woods *et als.*

Hampden. September 26, 1899-September 5, 1900.

176 Mass. 492.

Conspiracy by Members of Labor Union to compel Others to join Union — Coercion and Intimidation by Threats to Employers of Strikes and Boycotts — Equity — Injunction.

If the members of one labor union conspire to compel the members of another union of the same craft to join the former union, from which they have withdrawn, and to carry out their purpose threaten strikes and boycotts to induce the employers of the members of the latter union either to get them to ask for reinstatement in the former union, or, failing so to do, then to discharge them, although no acts of personal violence or of physical injury to property are committed, such conspiracy and the acts in pursuance of it are unlawful, and having caused, and being likely still further to cause, injury, equity will restrain the actors by injunction. Holmes, C.J., dissenting.

Bill in equity, filed in the Superior Court, by the officers and members "of the voluntary association known as Union 257, Painters and Decorators of America of Springfield, Massachusetts, which Union is affiliated with a national organization of the same name, with headquarters at Lafayette in the State of Indiana," against the officers and members "of the voluntary association known as Union 257, Painters and Decorators of America, which Union is affiliated with a national organization of the same name, with headquarters at Baltimore in the State of Maryland," to restrain

the defendants from any acts or the use of any methods tending to prevent the members of the plaintiff association from securing employment or continuing in their employment. Hearing before *Dewey*, J., who entered the following decree:

"This cause came on to be heard, and was argued by counsel; and thereupon, on consideration thereof, it is ordered, adjudged, and decreed that the defendant association, the defendants, and each and every of them, their committees, agents, and servants, be restrained and strictly enjoined from interfering and from combining, conspiring, or attempting to interfere, with the employment of members of the plaintiffs' said association, by representing or causing to be represented in express or implied terms, to any employer of said members of plaintiffs' association, or to any person or persons or corporation who might become employers of any of the plaintiffs, that such employers will suffer or are likely to suffer some loss or trouble in their business for employing or continuing to employ said members of plaintiffs' said association; or by representing, directly or indirectly, for the purpose of interfering with the employment of members of the plaintiffs' said association, to any who have contracts or may have contracts for services to be performed by employers of members of plaintiffs' said association, that such persons will or are likely to suffer some loss or trouble in their business for allowing such employers of members of plaintiffs' said association (and because they are such employers) to obtain or perform such contracts; or by intimidating, or attempting to intimidate, by threats, direct or indirect, express or implied, of loss or trouble in business, or otherwise, any person or persons or corporation who now are employing or may hereafter employ or desire to employ any of the members of the plaintiffs' said association; or by attempting by any scheme or conspiracy, among themselves or with others, to annoy, hinder, or interfere with, or prevent any person or persons or corporation from employing or continuing to employ a member or members of plaintiffs' said association; or by causing, or attempting to cause, any person to discriminate against any employer of members of plaintiffs' said association (because he is such employer) in giving or allowing the performance of contracts to or by such employer; and from any and all acts, or the use of any methods, which by putting or attempting to put any person or persons or corporation in fear of loss or trouble, will tend to hinder, impede, or obstruct members, or any member, of the plaintiffs' said association from securing employment or continuing in employment. And that the plaintiffs recover their costs, taxed as in an action of law."

The case was reported, at the request of both parties, for the determination of this court. The facts appear in the opinion.

W. R. Heady (*J. W. Flannery* with him), for the plaintiffs.

W. H. McClintock (*J. B. Carroll* with him), for the defendants.

Hammond, J. This case arises out of a contest for supremacy between two labor unions of the same craft, having substantially the same constitution and by-laws. The chief difference between them is that the plaintiff union is affiliated with a national organization having its headquarters in Lafayette in the State of Indiana, while the defendant union is affiliated with a similar organization having its headquarters in Baltimore in the State of Maryland. The plaintiff union was composed of workmen who in 1897 withdrew from the defendant union.

There does not appear to be anything illegal in the object of either union as expressed in its constitution and by-laws. The defendant union is also represented by

delegates in the Central Labor Union, which is an organization composed of five delegates from each trade union in the city of Springfield, and had in its constitution a provision for levying a boycott upon a complaint made by any union.

The case is before us upon a report after a final decree in favor of the plaintiffs, based upon the findings stated in the report of the master.

The contest became active early in the fall of 1898. In September of that year, the members of the defendant union declared "all painters not affiliated with the Baltimore headquarters to be non-union men," and voted to "notify the bosses" of that declaration. The manifest object of the defendants was to have all the members of the craft subjected to the rules and discipline of their particular union, in order that they might have better control over the whole business, and to that end they combined and conspired to get the plaintiffs and each of them to join the defendant association, peaceably if possible, but by threat and intimidation if necessary. Accordingly, on October 7, they voted that "if our demands are not complied with, all men working in shops where Lafayette people are employed refuse to go to work." The plaintiffs resisting whatever persuasive measures, if any, were used by the defendants, the latter proceeded to carry out their plan in the manner fully set forth in the master's report. Without rehearsing the circumstances in detail it is sufficient to say here that the general method of operations was substantially as follows.

A duly authorized agent of the defendants would visit a shop where one or more of the plaintiffs were at work and inform the employer of the action of the defendant union with reference to the plaintiffs, and ask him to induce such of the plaintiffs as were in his employ to sign applications for reinstatement in the defendant union. As to the general nature of these interviews the master finds that the defendants have been courteous in manner, have made no threats of personal violence, have referred to the plaintiffs as non-union men, but have not otherwise represented them as men lacking good standing in their craft; that they have not asked that the Lafayette men be discharged, and in some cases have expressly stated that they did not wish to have them discharged, but only that they sign the blanks for reinstatement in the defendant union. The master, however, further finds, from all the circumstances under which those requests were made, that the defendants intended that employers of Lafayette men should fear trouble in their business if they continued to employ such men, and that employers to whom these requests were made were justified in believing that a failure on the part of their employees who were Lafayette men to sign such reinstatement blanks, and a failure on the part of the employers to discharge them for not doing so, would lead to trouble in the business of the employers in the nature of strikes or a boycott, and the employers to whom these requests were made did believe that such results would follow, and did suggest their belief to the defendants, and the defendants did not deny that such results might occur; that the strikes which did occur appear to have been steps taken by the defendants to obtain the discharge of such employees as were Lafayette men who declined to sign application blanks for reinstatement; that these defendants did not in all cases threaten a boycott of the employers' business, but did threaten that the place of business of at least one such employer would be left off from a so-called "fair list" to be published by the Baltimore Union. The master also found that, from all the evidence presented, the object which the Baltimore men and the defendant association sought to accomplish in all the acts which were testified

to was to compel the members of the Lafayette Union to join the Baltimore Union, and as a means to this end they caused strikes to be instituted in the shops where strikes would seriously interfere with the business of the shops, and in all other shops they made such representations as would lead the proprietors thereof to expect trouble in their business.

We have, therefore, a case where the defendants have conspired to compel the members of the plaintiff union to join the defendant union, and to carry out their purpose have resolved upon such coercion and intimidation as naturally may be caused by threats of loss of property by strikes and boycotts, to induce the employers either to get the plaintiffs to ask for reinstatement in the defendant union, or, that failing, then to discharge them. It matters not that this request to discharge has not been expressly made. There can be no doubt, upon the findings of the master and the facts stated in this report, that the compulsory discharge of the plaintiffs in case of non-compliance with the demands of the defendant union is one of the prominent features of the plan agreed upon.

It is well to see what is the meaning of this threat to strike, when taken in connection with the intimation that the employer may "expect trouble in his business." It means more than that the strikers will cease to work. That is only the preliminary skirmish. It means that those who have ceased to work will, by strong, persistent, and organized persuasion and social pressure of every description, do all they can to prevent the employer from procuring workmen to take their places. It means much more. It means that, if these peaceful measures fail, the employer may reasonably expect that unlawful physical injury may be done to his property; that attempts in all the ways practiced by organized labor will be made to injure him in his business, even to his ruin, if possible; and that, by the use of vile and opprobrious epithets and other annoying conduct, and actual and threatened personal violence, attempts will be made to intimidate those who enter or desire to enter his employ; and that whether or not all this be done by the strikers or only by their sympathizers, or with the open sanction and approval of the former, he will have no help from them in his efforts to protect himself.

However mild the language or suave the manner in which the threat to strike is made under such circumstances as are disclosed in this case, the employer knows that he is in danger of passing through such an ordeal as that above described, and those who make the threat know that as well as he does. Even if the intent of the strikers, so far as respects their own conduct and influence, be to discountenance all actual or threatened injury to person or property or business, except that which is the direct necessary result of the interruption of the work, and even if their connection with the injurious and violent conduct of the turbulent among them or of their sympathizers be not such as to make them liable criminally or even answerable civilly in damages to those who suffer, still with full knowledge of what is to be expected they give the signal, and in so doing must be held to avail themselves of the degree of fear and dread which the knowledge of such consequences will cause in the mind of those — whether their employer or fellow workmen — against whom the strike is directed; and the measure of coercion and intimidation imposed upon those against whom the strike is threatened or directed is not fully realized until all those probable consequences are considered.

Such is the nature of the threat, and such the degree of coercion and intimidation involved in it.

If the defendants can lawfully perform the acts complained of in the city of Springfield, they can pursue the plaintiffs all over the State in the same manner, and compel them to abandon their trade or bow to the behests of their pursuers.

It is to be observed that this is not a case between the employer and employed, or, to use a hackneyed expression, between capital and labor, but between laborers all of the same craft, and each having the same right as any one of the others to pursue his calling. In this, as in every other case of equal rights, the right of each individual is to be exercised with due regard to the similar right of all others, and the right of one be said to end where that of another begins.

The right involved is the right to dispose of one's labor with full freedom. This is a legal right, and it is entitled to legal protection. Sir William Erle in his book on Trade Unions, page 12, has stated this in the following language, which has been several times quoted with approval by judges in England: "Every person has a right under the law, as between him and his fellow subjects, to full freedom in disposing of his own labor or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description — done, not in the exercise of the actor's own right, but for the purpose of obstruction — would, if damage should be caused thereby to the party obstructed, be a violation of this prohibition."

The same rule is stated with care and discrimination by Wells, J., in *Walker* v. *Cronin*, 107 Mass. 555, 564: "Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance, or loss, come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ*, unless some superior right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing."

In this case the acts complained of were calculated to cause damage to the plaintiffs, and did actually cause such damage; and they were intentionally done for that purpose. Unless, therefore, there was justifiable cause, the acts were malicious and unlawful. *Walker* v. *Cronin*, *ubi supra*. *Carew* v. *Rutherford*, 106 Mass. 1, and cases cited therein.

The defendants contend that they have done nothing unlawful, and, in support of that contention, they say that a person may work for whom he pleases; and, in the absence of any contract to the contrary, may cease to work when he pleases, and for any reason whatever, whether the same be good or bad; that he may give notice of his intention in advance, with or without stating the reason; that what one man may do several men acting in concert may do, and may agree beforehand that they will do, and may give notice of the agreement; and that all this may be lawfully done notwithstanding such considered action may, by reason of the consequent interruption of the work, result in great loss to the employer and his other employees, and that such

a result was intended. In a general sense, and without reference to exceptions arising out of conflicting public and private interests, all this may be true.

It is said also that, where one has the lawful right to do a thing, the motive by which he is actuated is immaterial. One form of this statement appears in the first head-note in *Allen* v. *Flood*, as reported in [1898] A. C. 1, as follows: "An act lawful in itself is not converted by a malicious or bad motive into an unlawful act so as to make the doer of the act liable to a civil action." If the meaning of this and similar expressions is that where a person has the lawful right to do a thing irrespective of his motive, his motive is immaterial, the proposition is a mere truism. If, however, the meaning is that where a person, if actuated by one kind of a motive, has a lawful right to do a thing, the act is lawful when done under any conceivable motive, or that an act lawful under one set of circumstances is therefore lawful under every conceivable set of circumstances, the proposition does not commend itself to us as either logically or legally accurate.

In so far as a right is lawful, it is lawful, and in many cases the right is so far absolute as to be lawful whatever may be the motive of the actor, as where one digs upon his own land for water (*Greenleaf* v. *Francis*, 18 Pick. 117), or makes a written lease of his land for the purpose of terminating a tenancy at will (*Groustra* v. *Bourges*, 141 Mass. 7), but in many cases the lawfulness of an act which causes damage to another may depend upon whether the act is for justifiable cause; and this justification may be found sometimes in the circumstances under which it is done irrespective of motive, sometimes in the motive alone, and sometimes in the circumstances and motive combined.

This principle is of very general application in criminal law, and also is illustrated in many branches of the civil law, as in cases of libel and of procuring a wife to leave her husband. *Tasker* v. *Stanley*, 153 Mass. 148, and cases therein cited. Indeed the principle is a prominent feature underlying the whole doctrine of privilege, malice, and intent. See on this an instructive article in 8 Harvard Law Review, 1, where the subject is considered at some length.

It is manifest that not much progress is made by such general statements as those quoted above from *Allen* v. *Flood*, whatever may be their meaning.

Still standing for solution is the question, Under what circumstances, including the motive of the actor, is the act complained of lawful, and to what extent?

In cases somewhat akin to the one at bar this court has had occasion to consider the question how far acts, manifestly coercive and intimidating in their nature, which cause damage and injury to the business or property of another, and are done with intent to cause such injury and partly in reliance upon such coercion, are justifiable.

In *Bowen* v. *Matheson*, 14 Allen, 499, it was held to be lawful for persons engaged in the business of shipping seamen to combine together into a society for the purpose of competing with other persons engaged in the same business, and it was held lawful for them, in pursuance of that purpose, to take men out of a ship, if men shipped by a non-member were in that ship; to refuse to furnish seamen through a non-member; to notify the public that they had combined against non-members, and had "laid the plaintiff on the shelf"; to notify the plaintiff's customers and friends that the plaintiff could not ship seamen for them; and to interfere in all these ways with the business of the plaintiff as a shipping agent, and compel him to abandon the same. The justifica-

tion for these acts, so injurious to the business of the plaintiff and so intimidating in their nature, is to be found in the law of competition. No legal right of the plaintiff was infringed upon, and, as stated by Chapman, J., in giving the opinion of the court (p. 503), "if their effect is to destroy the business of shipping-masters who are not members of the association, it is such a result as in the competition of business often follows from a course of proceedings that the law permits." The primary object of the defendants was to build up their own business, and this they might lawfully do to the extent disclosed in that case, even to the injury of their rivals.

Similar decisions have been made in other courts where acts somewhat coercive in their nature and effect have been held justifiable under the law of competition. *Mogul Steamship Co.* v. *McGregor* [1892], A. C. 25. *Bohn Manuf. Co.* v. *Hollis*, 54 Minn. 223. *Macauley* v. *Tierney*, 19 R. I. 255.

On the other hand, it was held in *Carew* v. *Rutherford*, 106 Mass. 1, that a conspiracy against a mechanic, — who is under the necessity of employing workmen in order to carry on his business, — to obtain a sum of money from him which he is under no legal obligation to pay, by inducing his workmen to leave him, or by deterring others from entering into his employ, or by threatening to do this so that he is induced to pay the money demanded, under a reasonable apprehension that he cannot carry on his business without yielding to the demands, is an illegal, if not a criminal, conspiracy; that the acts done under it are illegal, and that the money thus obtained may be recovered back. Chapman, C.J., speaking for the court, says that there is no doubt that, if the parties under such circumstances succeed in injuring the business of the mechanic, they are liable to pay all the damages done to him.

That case bears a close analogy to the one at bar. The acts there threatened were like those in this case, and the purpose was, in substance, to force the plaintiff to give his work to the defendants, and to extort from him a fine because he had given some of his work to other persons.

Without now indicating to what extent workmen may combine and in pursuance of an agreement may act by means of strikes and boycotts to get the hours of labor reduced or their wages increased, or to procure from their employers any other concession directly and immediately affecting their own interests, or to help themselves in competition with their fellow-workmen, we think this case must be governed by the principles laid down in *Carew* v. *Rutherford, ubi supra.* The purpose of these defendants was to force the plaintiffs to join the defendant association, and to that end they injured the plaintiffs in their business, and molested and disturbed them in their efforts to work at their trade. It is true they committed no acts of personal violence, or of physical injury to property, although they threatened to do something which might reasonably be expected to lead to such results. In their threat, however, there was plainly that which was coercive in its effect upon the will. It is not necessary that the liberty of the body should be restrained. Restraint of the mind, provided it would be such as would be likely to force a man against his will to grant the thing demanded, and actually has that effect, is sufficient in cases like this. As stated by Lord Bramwell in *Regina* v. *Druitt*, 10 Cox C. C. 592, 600, "No right of property, or capital, . . . was so sacred, or so carefully guarded by the law of this land, as that of personal liberty. . . . That liberty was not liberty of the body only. It was also a liberty of the mind and will; and the liberty of a man's mind and will,

to say how he should bestow himself and his means, his talents, and his industry, was as much a subject of the law's protection as was that of his body."

It was not the intention of the defendants to give fairly to the employer the option to employ them or the plaintiffs, but to compel the latter against their will to join the association, and to that end to molest and interfere with them in their efforts to procure work by acts and threats well calculated by their coercive and intimidating nature to overcome the will.

The defendants might make such lawful rules as they please for the regulation of their own conduct, but they had no right to force other persons to join them.

The necessity that the plaintiffs should join this association is not so great, nor is its relation to the rights of the defendants, as compared with the right of the plaintiffs to be free from molestation, such as to bring the acts of the defendants under the shelter of the principles of trade competition. Such acts are without justification, and therefore are malicious and unlawful, and the conspiracy thus to force the plaintiffs was unlawful. Such conduct is intolerable, and inconsistent with the spirit of our laws.

The language used by this court in *Carew* v. *Rutherford*, 106 Mass. 1, 15, may be repeated here with emphasis, as applicable to this case: "The acts alleged and proved in this case are peculiarly offensive to the free principles which prevail in this country; and if such practices could enjoy impunity, they would tend to establish a tyranny of irresponsible persons over labor and mechanical business which would be extremely injurious to both." See, in addition to the authorities above cited, *Commonwealth* v. *Hunt*, 4 Met. 111; *Sherry* v. *Perkins*, 147 Mass. 212, 214; *Vegelahn* v. *Guntner*, 167 Mass. 92, 97; St. 1894, c. 508, § 2;[1] *State* v. *Donaldson*, 3 Vroom, 151; *State* v. *Stewart*, 59 Vt. 273; *State* v. *Glidden*, 55 Conn. 46; *State* v. *Dyer*, 67 Vt. 690; *Lucke* v. *Clothing Cutters & Trimmers' Assembly*, 77 Md. 396.

As the plaintiffs have been injured by these acts, and there is reason to believe that the defendants contemplate further proceedings of the same kind which will be likely still more to injure the plaintiffs, a bill in equity lies to enjoin the defendants. *Vegelahn* v. *Guntner*, *ubi supra*.

Some phases of the labor question have recently been discussed in the very elaborately considered case of *Allen* v. *Flood*, *ubi supra*. Whether or not the decision made therein is inconsistent with the propositions upon which we base our decision in this case, we are not disposed, in view of the circumstances under which that decision was made, to follow it. We prefer the view expressed by the dissenting judges, which view, it may be remarked, was entertained not only by three of the nine lords who sat in the case, but also by the great majority of the common law judges who had occasion officially to express an opinion.

There must be, therefore, a decree for the plaintiffs. We think, however, that the clause, "or by causing or attempting to cause, any person to discriminate against any employer of members of plaintiffs' said association (because he is such employer) in giving or allowing the performance of contracts to or by such employer," is too broad and indefinite, inasmuch as it might seem to include mere lawful persuasion and other similar and peaceful acts; and for that reason, and also because so far as respects

[1] This section is as follows: "No person shall, by intimidation or force, prevent or seek to prevent a person from entering into or continuing in the employment of any person or corporation."

unlawful acts it seems to cover only such acts as are prohibited by other parts of the decree, we think it should be omitted.

Inasmuch as the association of the defendants is not a corporation, an injunction cannot be issued against it as such, but only against its members, their agents and servants.

As thus modified, in the opinion of the majority of the court, the decree should stand. *Decree accordingly.*

HOLMES, C.J. [*dissenting*]. When a question has been decided by the court, I think it proper, as a general rule, that a dissenting judge, however strong his convictions may be, should thereafter accept the law from the majority and leave the remedy to the Legislature, if that body sees fit to interfere. If the decision in the present case simply had relied upon *Vegelahn* v. *Guntner*, 167 Mass. 92, I should have hesitated to say anything, although I might have stated that my personal opinion had not been weakened by the substantial agreement with my views to be found in the judgments of the majority of the House of Lords in *Allen* v. *Flood*, [1898] A. C. 1. But much to my satisfaction, if I may say so, the court has seen fit to adopt the mode of approaching the question which I believe to be the correct one, and to open an issue which otherwise I might have thought closed. The difference between my brethren and me now seems to be a difference of degree, and the line of reasoning followed makes it proper for me to explain where the difference lies.

I agree that the conduct of the defendants is actionable unless justified. *May* v. *Wood*, 172 Mass. 11, 14, and cases cited. I agree that the presence or absence of justification may depend upon the object of their conduct, that is, upon the motive with which they acted. *Vegelahn* v. *Guntner*, 167 Mass. 92, 105, 106. I agree, for instance, that if a boycott or a strike is intended to override the jurisdiction of the courts by the action of a private association, it may be illegal. *Weston* v. *Barnicoat*, 175 Mass. 454. On the other hand, I infer that a majority of my brethren would admit that a boycott or strike intended to raise wages directly might be lawful, if it did not embrace in its scheme or intent violence, breach of contract, or other conduct unlawful on grounds independent of the mere fact that the action of the defendants was combined. A sensible workingman would not contend that the courts should sanction a combination for the purpose of inflicting or threatening violence or the infraction of admitted rights. To come directly to the point, the issue is narrowed to the question whether, assuming that some purposes would be a justification, the purpose in this case of the threatened boycotts and strikes was such as to justify the threats. That purpose was not directly concerned with wages. It was one degree more remote. The immediate object and motive was to strengthen the defendants' society as a preliminary and means to enable it to make a better fight on questions of wages or other matters of clashing interests. I differ from my brethren in thinking that the threats were as lawful for this preliminary purpose as for the final one to which strengthening the union was a means. I think that unity of organization is necessary to make the contest of labor effectual, and that societies of laborers lawfully may employ in their preparation the means which they might use in the final contest.

Although this is not the place for extended economic discussion, and although the law may not always reach ultimate economic conceptions, I think it well to add that I cherish no illusions as to the meaning and effect of strikes. While I think the strike

a lawful instrument in the universal struggle of life, I think it pure phantasy to suppose that there is a body of capital of which labor as a whole secures a larger share by that means. The annual product, subject to an infinitesimal deduction for the luxuries of the few, is directed to consumption by the multitude, and is consumed by the multitude, always. Organization and strikes may get a larger share for the members of an organization, but, if they do, they get it at the expense of the less organized and less powerful portion of the laboring mass. They do not create something out of nothing. It is only by divesting our minds of questions of ownership and other machinery of distribution, and by looking solely at the question of consumption, — asking ourselves what is the annual product, who consumes it, and what changes would or could we make, — that we can keep in the world of realities. But, subject to the qualifications which I have expressed, I think it lawful for a body of workmen to try by combination to get more than they now are getting, although they do it at the expense of their fellows, and to that end to strengthen their union by the boycott and the strike.

Fred A. Moran *v.* John Dunphy.

Suffolk. November 23, 1900–January 4, 1901.

177 Mass. 485.

In an action for maliciously by means of slanderous charges inducing a third person to discharge the plaintiff from his employ, the declaration must set out the substance of the false statements.

To maliciously induce an employer to discharge an employee is an actionable tort, whether accomplished by malevolent advice or by falsehood or putting in fear.

Tort, for maliciously inducing one Robert J. Cowan to discharge the plaintiff from his employ. Writ dated December 19, 1899.

The case came up on an appeal from a judgment of the Superior Court rendered by *Braley*, J., sustaining the defendant's demurrer to the declaration. [The declaration was in two counts and alleged in substance that the plaintiff had been, in the employ of one Robert J. Cowan, under an oral contract between said Cowan and himself; that while he was still in said employ, the defendant, with intent to injure him, did maliciously, wilfully, and wrongfully induce the said Cowan to discharge him from his employ and to refuse to engage his services any longer; that said Cowan did discharge him at the defendant's instigation; whereby the plaintiff suffered great loss and damage.][1]

J. H. Hickey, for the plaintiff.

C. F. Eldredge, for the defendant.

Holmes, C.J. The first count of the declaration in this case substantially follows the form held bad in *May* v. *Wood*, 172 Mass. 11, and *Rice* v. *Albee*, 164 Mass. 88, and the plaintiff's argument is directed to getting those cases overruled. It appears in the reports that the later decision did not command the assent of all of us, and it is quite possible at least that if the question came up now for the first time the majority might be found to be on the side which did not prevail. *Van Horn* v. *Van Horn*, 27 Vroom, 318, 319. But it is not desirable that decisions should oscillate with changes in the bench, and we accept what was decided as the law. Still we deem it proper to

[1] For the third, fourth, and fifth paragraphs of the statement of facts, this summary has been substituted.

call attention to the fact that the cases cited go only to a point of pleading. What they decide, so far as they bear on the present case, is merely that the substance of false statements by which a defendant is alleged to have induced a third person to break or end his contract must be set out. That we accept. But in view of the series of decisions by this court from *Walker* v. *Cronin*, 107 Mass. 555, through *Morasse* v. *Brochu*, 151 Mass. 567, *Tasker* v. *Stanley*, 153 Mass. 148, *Vegelahn* v. *Guntner*, 167 Mass. 92, *Hartnett* v. *Plumbers' Supply Association*, 169 Mass. 229, and *Weston* v. *Barnicoat*, 175 Mass. 454, to *Plant* v. *Woods*, 176 Mass. 492, we cannot admit a doubt that maliciously and without justifiable cause to induce a third person to end his employment of the plaintiff, whether the inducement be false slanders or successful persuasion, is an actionable tort. See also *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway*, 151 U. S. 1, 13.

We apprehend that there no longer is any difficulty in recognizing that a right to be protected from malicious interference may be incident to a right arising out of a contract, although a contract, so far as performance is concerned, imposes a duty only on the promisor. Again, in the case of a contract of employment, even when the employment is at will, the fact that the employer is free from liability for discharging the plaintiff does not carry with it immunity to the defendant who has controlled the employer's action to the plaintiff's harm. The notion that the employer's immunity must be a non-conductor so far as any remoter liability was concerned, troubled some of the judges in *Allen* v. *Flood* [1898], A. C. 1, but is disposed of for this Commonwealth by the cases cited. See also *May* v. *Wood*, 172 Mass. 11, 14, 15. So again it may be taken to be settled by *Plant* v. *Woods*, 176 Mass. 492, 501, 502, that motives may determine the question of liability; that while intentional interference of the kind supposed may be privileged if for certain purposes, yet if due only to malevolence it must be answered for. On that point the judges were of one mind. See p. 504. Finally, we see no sound distinction between persuading by malevolent advice and accomplishing the same result by falsehood or putting in fear. In all these cases the employer is controlled through motives created by the defendant for the unprivileged purpose. It appears to us not to matter which motive is relied upon. If accomplishing the end by one of them is a wrong to the plaintiff, accomplishing it by either of the others must be equally a wrong.

It follows from what we have said that we are of opinion that both counts of the declaration disclose a good cause of action, although the first on the authority of *May* v. *Wood* must be held insufficient in point of form. The second is not within the authority or reason of that case, 172 Mass. 14, and is in a form similar to the third count which was held good in *Walker* v. *Cronin*. See *Lumley* v. *Gye*, 2 El. & Bl. 216. As to that the demurrer will be overruled. Assuming that the demurrer was intended to be a demurrer to each count as well as to the declaration, it will be sustained as to the first count, but it seems to us that under the circumstances the plaintiff should be given an opportunity to amend.

Demurrer to first count sustained; demurrer to second count overruled.

Fred Martell *v.* James N. White *et als.*

Norfolk. December 9, 1902–March 1, 1904.

185 Mass. 255.

Conspiracy, Civil action.

In an action of tort for an alleged conspiracy to injure the plaintiff in his business, it appeared, that the plaintiff was engaged in the business of quarrying granite and selling it to granite workers, and that the defendants were members of a voluntary association of granite workers, who, by the enforcement of a by-law imposing heavy fines for its violation, were coerced into refusing to trade with the plaintiff because he was not a member of the association, whereby his business was ruined. *Held*, that it was error to order a verdict for the defendants, and that the case should have been submitted to the jury.

Tort for an alleged conspiracy to injure the plaintiff in his business of quarrying and selling granite, carried on by him at Quincy. Writ dated March 9, 1899.

In the Superior Court the case was tried before *Bishop* J., who, at the conclusion of the evidence, ruled that the plaintiff could not recover, and ordered a verdict for the defendants. The plaintiff alleged exceptions.

E. R. Anderson, for the plaintiff.

J. W. McAnarney (*J. E. Cotter* with him), for the defendants.

Hammond, J. The evidence warranted the finding of the following facts, many of which were not in dispute. The plaintiff was engaged in a profitable business in quarrying granite and selling the same to granite workers in Quincy and vicinity. About January, 1899, his customers left him, and his business was ruined through the action of the defendants and their associates.

The defendants were all members of a voluntary association known as the Granite Manufacturers' Association of Quincy, Massachusetts, and some of them were on the executive committee. The association was composed of "such individuals, firms, or corporations as are, or are about to become manufacturers, quarriers, or polishers of granite." There was no constitution and, while there were by-laws, still, except as hereinafter stated, there was in them no statement of the objects for which the association was formed. The by-laws provided among other things for the admission, suspension and expulsion of members, the election of officers, including an executive committee, and defined the respective powers and duties of the officers. One of the by-laws read as follows: "For the purpose of defraying in part the expense of the maintenance of this organization, any member hereof having business transactions with any party or concern in Quincy or its vicinity, not members hereof, and in any way relating to the cutting, quarrying, polishing, buying or selling of granite (hand polishers excepted) shall for each of said transactions contribute at least $1 and not more than $500. The amount to be fixed by the Association upon its determining the amount and nature of said transaction."

Acting under the by-laws, the association investigated charges which were made against several of its members that they had purchased granite from a party "not a member" of the association. The charges were proved, and under the section above quoted it was voted that the offending parties should respectively "contribute to the funds of the association" the sums named in the votes. These sums ranged from $10 to $100. Only the contribution of $100 has been paid, but it is a fair inference

that the proceedings to collect the others have been delayed only by reason of this suit. The party "not a member" was the present plaintiff, and the members of the association knew it. Most of the customers of the plaintiff were members of the association, and after these proceedings they declined to deal with him. This action on their part was due to the course of the association in compelling them to contribute as above stated, and to their fear that a similar vote for contribution would be passed should they continue to trade with the plaintiff.

The jury might properly have found also that the euphemistic expression "shall . . . contribute" to the funds of the association contained an idea which could be more tersely and accurately expressed by the phrase "shall pay a fine," or, in other words, that the plain intent of the section was to provide for the imposition upon those who came within its provisions of a penalty in the nature of a substantial fine. The bill of exceptions recites that "there was no evidence of threats or intimidation practised upon the plaintiff himself, and the acts complained of were confined to the action of the society upon its own members." We understand this statement to mean simply that the acts of the association concerned only such of the plaintiff's customers as were members, and that no pressure was brought to bear upon the plaintiff except such as fairly resulted from action upon his customers. While it is true that the by-law was not directed expressly against the plaintiff by name, still he belonged to the class whose business it was intended to affect, and the proceedings actually taken were based upon transactions with him alone, and in that way were directed against him alone. It was the intention of the defendants to withdraw his customers from him, if possible, by the imposition of fines upon them, with the knowledge that the result would be a great loss to the plaintiff. The defendants must be presumed to have intended the natural result of their acts.

Here, then, is a clear and deliberate interference with the business of a person with the intention of causing damage to him and ending in that result. The defendants combined and conspired together to ruin the plaintiff in his business, and they accomplished their purpose. In all this have they kept within lawful bounds?

It is elemental that the unlawfulness of a conspiracy may be found either in the end sought or the means to be used. If either is unlawful within the meaning of the term as applied to the subject, then the conspiracy is unlawful. It becomes necessary, therefore, to examine into the nature of the conspiracy in this case, both as to the object sought and the means used.

The case presents one phase of a general subject which gravely concerns the interests of the business world and indeed those of all organized society, and which in recent years has demanded and received great consideration in the courts and elsewhere. Much remains to be done to clear the atmosphere, but some things at least appear to have been settled, and certainly at this stage of the judicial inquiry it cannot be necessary to enter upon a course of reasoning or to cite authorities in support of the proposition that while a person must submit to competition he has the right to be protected from malicious interference with his business. The rule is well stated in *Walker* v. *Cronin*, 107 Mass. 555, 564, in the following language: "Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If dis-

turbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ*, unless some superior right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing."

In a case like this, where the injury is intentionally inflicted, the crucial question is whether there is justifiable cause for the act. If the injury be inflicted without just cause or excuse, then it is actionable. Bowen, L.J. in *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 613. *Plant* v. *Woods*, 176 Mass. 492. The justification must be as broad as the act and must cover not only the motive and the purpose, or in other words the object sought, but also the means used.

The defendants contend that both as to object and means they are justified by the law applicable to business competition. In considering this defence it is to be remembered, as was said by Bowen, L.J. in *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 611, that there is presented "an apparent conflict or antinomy between two rights that are equally regarded by the law — the right of the plaintiffs to be protected in the legitimate exercise of their trade, and the right of the defendants to carry on their business as seems best to them, provided they commit no wrong to others." Here, as in most cases where there is a conflict between two important principles, either of which is sound and to be sustained within proper bounds, but each of which must finally yield to some extent to the other, it frequently is not possible by a general formula to mark out the dividing line with reference to every conceivable case, and it is not wise to attempt it. The best and only practicable course is to consider the cases as they arise, and, bearing in mind the grounds upon which the soundness of each principle is supposed to rest, by a process of elimination and comparison to establish points through which at least the line must run and beyond which the party charged with trespass shall not be allowed to go.

While the purpose to injure the plaintiff appears clearly enough, the object or motive is left somewhat obscure upon the evidence. The association had no written constitution, and the by-laws do not expressly set forth its objects. It is true that from the by-laws it appears that none but persons engaged in the granite business can be members, and that a member transacting any business of this kind with a person not a member is liable to a fine; from which it may be inferred that it is the idea of the members that for the protection of their business it would be well to confine it to transactions among themselves, and that one at least of the objects of the association is to advance the interests of the members in that way. The oral testimony tends to show that one object of the association is to see that agreements made between its members and their employees and between this association and similar associations in the same line of business be kept and "lived up to." Whether this failure to set out fully in writing the objects is due to any reluctance to have them clearly appear, or to some other cause, is of course not material to this case. The result, however, is that its objects do not so clearly appear as might be desired; but in view of the conclusion to which we have come as to the means used, it is not necessary to inquire more closely as to the objects. It may be assumed that one of the objects was to enable the members to compete more successfully with others in the same business, and that the acts of which the plaintiff complains were done for the ultimate protection and

advancement of their own business interests, with no intention or desire to injure the plaintiff except so far as such injury was the necessary result of measures taken for their own interests. If that was true, then so far as respects the end sought the conspiracy does not seem to have been illegal.

The next question is whether there is anything unlawful or wrongful in the means used as applied to the acts in question. Nothing need be said in support of the general right to compete. To what extent combination may be allowed in competition is a matter about which there is as yet much conflict, but it is possible that in a more advanced stage of the discussion the day may come when it will be more clearly seen and will more distinctly appear in the adjudication of the courts than as yet has been the case, that the proposition that what one man lawfully can do any number of men acting together by combined agreement lawfully may do, is to be received with newly disclosed qualifications arising out of the changed conditions of civilized life and of the increased facility and power of organized combination, and that the difference between the power of individuals acting each according to his own preference and that of an organized and extensive combination may be so great in its effect upon public and private interests as to cease to be simply one of degree and to reach the dignity of a difference in kind. Indeed, in the language of Bowen, L.J. in the *Mogul Steamship* case, *ubi supra*, page 616: "Of the general proposition, that certain kinds of conduct not criminal in any one individual may become criminal if done by combination among several, there can be no doubt. The distinction is based on sound reason, for a combination may make oppressive or dangerous that which if it proceeded only from a single person would be otherwise, and the very fact of the combination may show that the object is simply to do harm, and not to exercise one's own just rights." See also opinion of Stirling, L.J. in *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600, 621. Speaking generally, however, competition in business is permitted, although frequently disastrous to those engaged in it. It is always selfish, often sharp, and sometimes deadly. Conspicuous illustrations of the destructive extent to which it may be carried are to be found in the *Mogul Steamship* case above cited, and in *Bowen* v. *Matheson*, 14 Allen, 499. The fact therefore that the plaintiff was vanquished is not enough, provided that the contest was carried on within the rules allowable in such warfare.

It is a right, however, which is to be exercised with reference to the existence of a similar right on the part of others. The trader has not a free lance. Fight he may, but as a soldier, not as a guerilla. The right of competition rests upon the doctrine that the interests of the great public are best subserved by permitting the general and natural laws of business to have their full and free operation, and that this end is best attained when the trader is allowed in his business to make free use of these laws. He may praise his wares, may offer more advantageous terms than his rival, may sell at less than cost, or, in the words of Bowen, L.J. in the *Mogul Steamship* case, *ubi supra*, may adopt "the expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future." In these and many other obvious ways he may secure the customers of his rival, and build up his own business to the destruction of that of others, and so long as he keeps within the operation of the laws of trade his justification is complete.

But from the very nature of the case it is manifest that the right of competition furnishes no justification for an act done by the use of means which in their nature are in violation of the principle upon which it rests. The weapons used by the trader who relies upon this right for justification must be those furnished by the laws of trade, or at least must not be inconsistent with their free operation. No man can justify an interference with another man's business through fraud or misrepresentation, nor by intimidation, obstruction or molestation. In the case before us the members of the association were to be held to the policy of refusing to trade with the plaintiff by the imposition of heavy fines, or in other words they were coerced by actual or threatened injury to their property. It is true that one may leave the association if he desires, but if he stays in it he is subjected to the coercive effect of a fine to be determined and enforced by the majority. This method of procedure is arbitrary and artificial, and is based in no respect upon the grounds upon which competition in business is permitted, but on the contrary it creates a motive for business action inconsistent with that freedom of choice out of which springs the benefit of competition to the public, and has no natural or logical relation to the grounds upon which the right to compete is based. Such a method of influencing a person may be coercive and illegal. *Carew* v. *Rutherford*, 106 Mass. 1.

Nor is the nature of the coercion changed by the fact that the persons fined were members of the association. The words of Munson, J. in *Boutwell* v. *Marr*, 71 Vt. 1, 9, are applicable here: "The law cannot be compelled by any initial agreement of an associate member to treat him as one having no choice but that of the majority, nor as a wi ling participant in whatever action may be taken. The voluntary acceptance of by-laws providing for the imposition of coercive fines does not make them legal and collectible, and the standing threat of their imposition may properly be classed with the ordinary threat of suits upon groundless claims. The fact that the relations and processes deemed essential to a recovery are brought within the membership and proceedings of an organized body, cannot change the result. The law sees in the membership of an association of this character both the authors of its coercive system and the victims of its unlawful pressure. If this were not so, men could deprive their fellows of established rights, and evade the duty of compensation, simply by working through an association."

In view of the considerations upon which the right of competition is based, we are of opinion that as against the plaintiff the defendants have failed to show that the coercion or intimidation of the plaintiff's customers by means of a fine is justified by the law of competition. The ground of the justification is not broad enough to cover the acts of interference in their entirety, and the interference, being injurious and unjustifiable, is unlawful.

We do not mean to be understood as saying that a fine is of itself necessarily, or even generally, an illegal instrument. In many cases it is so slight as not to be coercive in its nature; in many it serves a useful purpose to call the attention of a member of an organization to the fact of the infraction of some innocent regulation; and in many it serves as an extra incentive to the performance of some absolute duty or the assertion of some absolute right. But where, as in the case before us, the fine is so large as to amount to moral intimidation or coercion, and is used as a means to enforce a right not absolute in its nature but conditional, and is inconsistent with

the conditions upon which the right rests, then the coercion becomes unjustifiable and taints with illegality the act.

The defendants strongly rely upon *Bowen* v. *Matheson*, 14 Allen, 499, *Mogul Steamship Co.* v. *McGregor* [1892], A. C. 25, *Bohn Manuf. Co.* v. *Hollis*, 54 Minn. 223, *Macauley Brothers* v. *Tierney*, 19 R. I. 255, and *Cote* v. *Murphy*, 159 Penn. St. 420. In none of these cases was there any coercion by means of fines upon those who traded with the plaintiff. Inducements were held out, but they were such as are naturally incident to competition, for instance, more advantageous terms in the way of discounts, increased trade, and otherwise. In the Minnesota case there was among the rules of the association a clause requiring the plaintiff to pay ten per cent, but the propriety or the legality of that provision was not involved. In *Bowen* v. *Matheson*, it is true that the by-laws provided for a fine, but the declaration did not charge that any coercion by means of a fine had been used. A demurrer to the declaration was sustained upon the ground that there was no sufficient allegation of an illegal act. The only allegation which need be noticed here was that the defendants "did prevent men from shipping with" the plaintiff, and as to this the court said: "This might be done in many ways which are lawful and proper, and as no illegal methods are stated the allegation is bad." This comes far short of sustaining the defendants in their course of coercion by means of fines. As to the other cases cited by the defendant it may be said that, while bearing upon the general subject of which the present case presents one phase, they are not inconsistent with the conclusion to which we have come. Among the authorities bearing upon the general subject and having some relation to the questions involved in this case, see, in addition to those hereinbefore cited, *Slaughter-House cases*, 16 Wall. 36, 116; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211; *Doremus* v. *Hennessy*, 176 Ill. 608; *Inter-Ocean Publishing Co.* v. *Associated Press*, 184 Ill. 438; *State* v. *Stewart*, 59 Vt. 273; *Olive* v. *Van Patten*, 7 Tex. App. 630; *Barr* v. *Essex Trades Council*, 8 Dick. 101; *Jackson* v. *Stanfield*. 137 Ind. 592; *Bailey* v. *Master Plumbers*, 103 Tenn. 99; *Brown* v. *Jacobs' Pharmacy Co.*, 115 Ga. 429; *Mogul Steamship Co.* v. *McGregor*, 15 Q. B. D. 476; 21 Q. B. D. 544; 23 Q. B. D. 598; [1892] A. C. 25.

For the reasons above stated, a majority of the court are of opinion that the case should have been submitted to the jury. *Exceptions sustained.*

Michael T. Berry *v.* Jerry E. Donovan.

Essex. March 10, 1905-June 20, 1905.

188 Mass. 353.

Malicious Interference — Actionable Tort — Labor Union — Boycotting.

Inducing an employer to discharge a workman because he does not belong to a certain labor union is actionable in tort as an unjustifiable interference with a contract.

If a manufacturer makes an agreement with a labor union that he will not retain any worker in his employ after receiving notice from the union that such worker is objectionable to the union for any cause, whatever rights this agreement may give the contracting parties in relation to each other, it does not justify an agent of the union in demanding and procuring the discharge of a workman by the manufacturer because the workman is not a member of the union, and if he does so he is liable to the workman in damages.

Berry *v.* Donovan.

It is no defence to an action of tort for maliciously causing the discharge of the plaintiff by his employer that the plaintiff's employment was terminable at the will of his employer, that fact being material only upon the question of damages.

KNOWLTON, C.J. This is an action of tort brought to recover damages sustained by reason of the defendant's malicious interference with the plaintiff's contract of employment. The plaintiff was a shoemaker, employed by the firm of Hazen B. Goodrich and Company at Haverhill, Massachusetts, under a contract terminable at will. At the time of the interference complained of he had been so employed nearly four years. The defendant was the representative at Haverhill of a national organization of shoe workers, called the Boot and Shoe Workers' Union, of which he was also a member. The evidence showed that he induced Goodrich and Company to discharge the plaintiff, greatly to his damage. A few days before the plaintiff's discharge, a contract was entered into between the Boot and Shoe Workers' Union and the firm of Goodrich and Company, which was signed by the defendant for the union, the second clause of which was as follows: "In consideration of the foregoing valuable privileges, the employer agrees to hire as shoe workers, only members of the Boot and Shoe Workers' Union, in good standing, and further agrees not to retain any shoe worker in his employment after receiving notice from the union that such shoe worker is objectionable to the union, either on account of being in arrears for dues, or disobedience of union rules or laws, or from any other cause." The contract contained various other provisions in regard to the employment of members of the union by the firm, and the rights of the firm and of the union in reference to the services of these employees, and the use of the union's stamp upon goods to be manufactured.

The plaintiff was not a member of this union. Soon after the execution of this contract, the defendant demanded of Goodrich and Company that the plaintiff be discharged, and the evidence tended to show that the sole ground for the demand was that the plaintiff was not a member of the union, and that he persistently declined to join it, after repeated suggestions that he should do so.

At the close of the evidence the defendant asked for the following instructions which the judge declined to give:

"1. Upon all the evidence in the case, the plaintiff is not entitled to recover.

"2. Upon all the evidence in the case, the defendant was acting as the legal representative of the Boot and Shoe Workers' Union and not in his personal capacity, and therefore the plaintiff cannot recover.

"3. The contract between the Boot and Shoe Workers' Union and Hazen B. Goodrich and Company was a valid contract, and the defendant, as the legal representative of the Boot and Shoe Workers' Union, had a right to call the attention of Hazen B. Goodrich and Company, or any member of the firm, to the fact that they were violating the terms of the contract in keeping the plaintiff in their employment after the contract was signed, and insisting upon an observance of the terms of the contract, even if the defendant knew that the observance of the terms of the contract would result in the discharge of the plaintiff from their employment.

"4. The contract referred to was a legal contract, and a justification of the acts of the defendant, as shown by the evidence in this case.

"6. The defendant cannot be held responsible in this action, unless it appears that the defendant used threats, or some act of intimidation, or some slanderous

statements, or some unlawful coercion to or against the employers of the plaintiff, to thereby cause the plaintiff's discharge; and upon all the evidence in the case there is no such evidence, and the plaintiff cannot recover."

The defendant excepted to the refusal, and to the portions of the charge which were inconsistent with the instructions requested. The jury returned a verdict of $1,500 for the plaintiff. These exceptions present the only questions which were argued before us by the defendant.

The primary right of the plaintiff to have the benefit of his contract and to remain undisturbed in the performance of it is universally recognized. The right to dispose of one's labor as he will, and to have the benefit of one's lawful contract, is incident to the freedom of the individual, which lies at the foundation of the government in all countries that maintain the principles of civil liberty. Such a right can lawfully be interfered with only by one who is acting in the exercise of an equal or superior right which comes in conflict with the other. An intentional interference with such a right, without lawful justification, is malicious in law, even if it is from good motives and without express malice. *Walker* v. *Cronin*, 107 Mass. 555, 562. *Plant* v. *Woods*, 176 Mass. 492, 498. *Allen* v. *Flood* [1898], A. C. 1, 18. *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 613. *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88, 96. *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600, 617.

In the present case the judge submitted to the jury, first, the question whether the defendant interfered with the plaintiff's rights under his contract with Goodrich and Company, and secondly, the question whether, if he did, the interference was without justifiable cause. The jury were instructed that, unless the defendant's interference directly caused the termination of the plaintiff's employment, there could be no recovery. The substance of the defendant's contention was, that if he acted under the contract between the Boot and Shoe Workers' Union and the employer in procuring the plaintiff's discharge, his interference was lawful.

This contention brings us to an examination of the contract. That part which relates to the persons to be employed contains, first, a provision that the employer will hire only members of the union. This has no application to the plaintiff's case, for it is an agreement only for the future, and the plaintiff had been hired a long time before. The next provision is, that the employer will not retain in his employment a worker, after receiving notice that he is objectionable to the union, "either on account of being in arrears for dues, or disobedience of union rules or laws, or from any other cause." The first two possible causes for objection could not be applied to persons in the situation of the plaintiff, who were not members of the union or amenable to its laws. As to such persons, the only provision applicable was that the firm would not retain a worker who was objectionable to the union from any cause, however arbitrary the objection, or unreasonable the cause might be. This provision purported to authorize the union to interfere and deprive any workman of his employment for no reason whatever, in the arbitrary exercise of its power. Whatever the contracting parties may do if no one but themselves is concerned, it is evident that, as against the workman, a contract of this kind does not of itself justify interference with his employment, by a third person who made the contract with his employer. *Curran* v. *Galen*, 152 N. Y. 33. No one can legally interfere with the employment of another, unless in the exercise of some right of his own, which the law respects. His will so to interfere for his own gratification is not such a right.

The judge rightly left to the jury the question whether, in view of all the circumstances, the interference was or was not for a justifiable cause. If the plaintiff's habits, or conduct, or character had been such as to render him an unfit associate, in the shop, for ordinary workmen of good character, that would have been a sufficient reason for interference in behalf of his shopmates. We can conceive of other good reasons. But the evidence tended to show that the only reason for procuring his discharge was his refusal to join the union. The question, therefore, is whether the jury might find that such an interference was unlawful.

The only argument that we have heard in support of interference by labor unions, in cases of this kind, is that it is justifiable as a kind of competition. It is true that fair competition in business brings persons into rivalry, and often justifies action for one's self, which interferes with proper action of another. Such action, on both sides, is the exercise by competing persons of equal conflicting rights. The principle appealed to would justify a member of the union, who was seeking employment for himself, in making an offer to serve on such terms as would result, and as he knew would result, in the discharge of the plaintiff by his employer, to make a place for the new comer. Such an offer, for such a purpose, would be unobjectionable. It would be merely the exercise of a personal right, equal in importance to the plaintiff's right. But an interference by a combination of persons, to obtain the discharge of a workman because he refuses to comply with their wishes, for their advantage, in some matter in which he has a right to act independently, is not competition. In such a case the action taken by the combination is not in the regular course of their business as employees, either in the service in which they are engaged, or in an effort to obtain employment in other service. The result which they seek to obtain cannot come directly from anything that they do within the regular line of their business as workers competing in the labor market. It can come only from action outside of the province of workingmen, intended directly to injure another, for the purpose of compelling him to submit to their dictation.

It is difficult to see how the object to be gained can come within the field of fair competition. If we consider it in reference to the right of employees to compete with one another, inducing a person to join a union has no tendency to aid them in such competition. Indeed the object of organizations of this kind is not to make competition of employees with one another more easy or successful. It is rather, by association, to prevent such competition, to bring all to equality, and to make them act together in a common interest. Plainly then, interference with one working under a contract, with a view to compel him to join a union, cannot be justified as a part of the competition of workmen with one another.

We understand that the attempted justification rests entirely upon another kind of so called competition, namely, competition between employers and the employed, in the attempt of each class to obtain as large a share as possible of the income from their combined efforts in the industrial field. In a strict sense, this is hardly competition. It is a struggle or contention of interests of different kinds, which are in opposition, so far as the division of profits is concerned. In a broad sense, perhaps the contending forces may be called competitors. At all events, we may assume that, as between themselves, the principle which warrants competition permits also reasonable efforts, of a proper kind, which have a direct tendency to benefit one party in his business at the expense of the other. It is no legal objection to action whose direct

effect is helpful to one of the parties in the struggle that it is also directly detrimental to the other. But when action is directed against the other, primarily for the purpose of doing him harm and thus compelling him to yield to the demand of the actor, and this action does not directly affect the property, or business, or status of the actor, the case is different, even if the actor expects to derive a remote or indirect benefit from the act.

The gain which a labor union may expect to derive from inducing others to join it, is not an improvement to be obtained directly in the conditions under which the men are working, but only added strength for such contests with employers as may arise in the future. An object of this kind is too remote to be considered a benefit in business, such as to justify the infliction of intentional injury upon a third person for the purpose of obtaining it. If such an object were treated as legitimate, and allowed to be pursued to its complete accomplishment, every employee would be forced into membership in a union, and the unions, by a combination of those in different trades and occupations, would have complete and absolute control of all the industries of the country. Employers would be forced to yield to all their demands, or give up business. The attainment of such an object in the struggle with employers would not be competition, but monopoly. A monopoly, controlling anything which the world must have, is fatal to prosperity and progress. In matters of this kind the law does not tolerate monopolies. The attempt to force all laborers to combine in unions is against the policy of the law, because it aims at monopoly. It therefore does not justify causing the discharge, by his employer, of an individual laborer working under a contract. It is easy to see that, for different reasons, an act which might be done in legitimate competition by one, or two, or three persons, each proceeding independently, might take on an entirely different character, both in its nature and its purpose, if done by hundreds in combination.

We have no desire to put obstacles in the way of employees, who are seeking by combination to obtain better conditions for themselves and their families. We have no doubt that laboring men have derived and may hereafter derive advantages from organization. We only say that, under correct rules of law, and with a proper regard for the rights of individuals, labor unions cannot be permitted to drive men out of employment because they choose to work independently. If disagreements between those who furnish the capital and those who perform the labor employed in industrial enterprises are to be settled only by industrial wars, it would give a great advantage to combinations of employees, if they could be permitted, by force, to obtain a monopoly of the labor market. But we are hopeful that this kind of warfare soon will give way to industrial peace, and that rational methods of settling such controversies will be adopted universally.

The fact that the plaintiff's contract was terminable at will, instead of ending at a stated time, does not affect his right to recover. It only affects the amount that he is to receive as damages. *Moran* v. *Dunphy*, 177 Mass. 485, 487. *Perkins* v. *Pendleton*, 90 Maine, 166, 176. *Lucke* v. *Clothing Cutters & Trimmers' Assembly*, 77 Md. 396. *London Guarantee & Accident Co.* v. *Horn*, 101 Ill. App. 355; *S. C.* 206 Ill. 493.

The conclusion which we have reached is well supported by authority. The principle invoked is precisely the same as that which lies at the foundation of the

decision in *Plant* v. *Woods*, 176 Mass. 492. In that case, although the power that lies in combination and the methods often adopted by labor unions in the exercise of it were stated with great clearness and ability, the turning point of the decision is found in this statement on page 502: "The necessity that the plaintiffs should join this association is not so great, nor is its relation to the rights of the defendants, as compared with the right of the plaintiffs to be free from molestation, such as to bring the acts of the defendants under the shelter of the principles of trade competition." *Carew* v. *Rutherford*, 106 Mass. 1. *Walker* v. *Cronin*, 107 Mass. 555, and the other cases cited in *Plant* v. *Woods*, *ubi supra*, as well as the later case of *Martell* v. *White*, 185 Mass. 255, all tend to support us in our decision.

We long have had a statute forbidding the coercion or compulsion by any person of any other "person into a written or verbal agreement not to join or become a member of a labor organization as a condition of his securing employment or continuing in the employment of such person." R. L. c. 106, § 12. The same principle would justify a prohibition of the coercion or compulsion of a person into a written or verbal agreement to join such an organization, as a condition of his securing employment, or continuing in the employment of another person.

The latest English cases, which explain and modify *Allen* v. *Flood* [1898], A. C. 1, seem in harmony with our conclusion. *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600. *Quinn* v. *Leathem* [1901], A. C. 495. In the first of these it was held that a labor union could not use its power to deprive one of employment, in order to compel him to pay a debt in which the union was interested. The case of *Curran* v. *Galen*, 152 N. Y. 33, in the decision of which the judges of the court of appeals were unanimous, fully covers the present case. The principle involved in each of the two cases is the same, and the language of the opinion in that case, in its application to this, is decisive. From the decision of *National Protective Assoc.* v. *Cumming*, 170 N. Y. 315, three of the seven judges dissented, and the result is to leave the law of New York in some uncertainty. The majority distinguished that case from *Curran* v. *Galen*, just referred to, and held that their decision was not inconsistent with it. They seem to have treated the arrangement to exclude persons not belonging to the union as entered into for legitimate purposes, having reference to actual or probable conditions in the employment; while the minority treated it as similar to the arrangement that appears in *Curran* v. *Galen*. See also *Jacobs* v. *Cohen*, 90 N. Y. Supp. 854; *Mills* v. *United States Printing Co.*, 99 App. Div. (N. Y.) 605.

The law of Illinois is in accord with our conclusion. In *London Guarantee & Accident Co.* v. *Horn*, 101 Ill. App. 355; *S. C.* 206 Ill. 493, it was held that a refusal of a workman to accede to the request of another in a matter affecting the pecuniary interest of the other would not justify the procurement of his discharge from the employment in which he was engaged, under a contract terminable at will. See also, for kindred doctrines, *Doremus* v. *Hennessy*, 176 Ill. 608; *Christensen* v. *People*, 114 Ill. App. 40; *Mathews* v. *People*, 202 Ill. 389; *Erdman* v. *Mitchell*, 207 Penn. St. 79; *Perkins* v. *Pendleton*, 90 Maine, 166. Other cases bearing more or less directly upon the general subject are *Lucke* v. *Clothing Cutters & Trimmers' Assembly*, 77 Md. 396; *Holder* v. *Cannon Manuf. Co.*, 135 N. C. 392; *Chipley* v. *Atkinson*, 23 Fla. 206; *Blumenthal* v. *Shaw*, 77 Fed. Rep. 954; *Barr* v. *Essex Trades Council*, 8 Dick. 101; *Jersey City Printing Co.* v. *Cassidy*, 18 Dick. 759; *Crump* v. *Commonwealth*, 84 Va. 927;

Old Dominion Steamship Co. v. *McKenna*, 30 Fed. Rep. 48; *Brown* v. *Jacobs' Pharmacy Co.*, 115 Ga. 429; *Bailey* v. *Master Plumbers*, 103 Tenn. 99; *Delz* v. *Winfree*, 80 Tex. 400. It will be seen that in the different courts there is considerable variety and some conflict of opinion.

We hold that the defendant was not justified by the contract with Goodrich and Company, or by his relations to the plaintiff, in interfering with the plaintiff's employment under his contract. How far the principles which we adopt would apply, under different conceivable forms of contract, to an interference with a workman not engaged, but seeking employment, or to different methods of boycotting, we have no occasion in this case to decide.

The defendant contends that the judge erred in his instruction to the jury, in response to the defendant's special request at the close of the charge. The judge said, in substance, that if the defendant caused the firm to discharge the plaintiff, by giving the members to understand that, unless they discharged him, they "would be visited with some punishment, under the contract or otherwise, then that interference would not be justifiable." This instruction, taken literally and alone, would be erroneous. Some grounds of interference would be justifiable while others would not. But considering the instruction in connection with that which immediately preceded it, and with other parts of the charge, it is evident that the judge was directing the attention of the jury to what would constitute an interference, not to what would justify an interference. He had just told them that, if all the defendant did was to call the attention of the firm to the provision of the contract, and the firm then, of their own motion, discharged the plaintiff, the defendant would not be liable. He then pursued the subject with some elaboration, and ended as stated above. Instead of saying, "then that interference would not be justifiable," he evidently meant to say, "then that would be interference which would create a liability, unless it was justifiable." Taking the charge as a whole, we think the jury were not misled by the inaccuracy of this statement. *Exceptions overruled.*

H. F. Hurlburt (*J. J. Ryan* with him), for the defendant.

J. J. Winn, for the plaintiff.

Robert H. Pickett *et ali.* *v.* Patrick J. Walsh *et als.*

Suffolk. May 17, 1906–October 16, 1906.

192 Mass. 572.

Equity Jurisdiction, To enjoin conspiracy, To enjoin unlawful interference with contract, Remedy at law — *Conspiracy — Labor Union — Strike — Equity Pleading and Practice*, Parties, Amendment, Decree.

A strike by the members of a bricklayers' union and the members of a stone masons' union in refusing to lay bricks or stone for a contractor in the construction of a certain building unless also employed to do the pointing of the mortar after the bricks and stones have been laid, and unless other persons, who are pointers but not bricklayers or stone masons and whom the contractor prefers to employ because they do the work of pointing better and for less pay, are discharged by him, does not entitle the pointers, when discharged by the contractor by reason of the strike, to maintain a suit in equity to enjoin the acts of the members of the unions on the ground that such acts constitute an unlawful conspiracy.

What is lawful for an individual may be unlawful when done by a combination of individuals.

Pickett *v.* Walsh.

A union of bricklayers and a union of stone masons lawfully may exclude from membership in their respective unions pointers of mortar who are not bricklayers or masons.

The right of coercion and compulsion which a labor union lawfully may exercise is limited to strikes against persons with whom the organization has a trade dispute. . . .[1]

An unincorporated labor union cannot be made a party to a suit in equity to enjoin the unlawful acts of its officers and members. . . .

Loring, J. This suit in equity comes before us on an appeal from a final decree, where the evidence was taken by a commissioner and where no findings of fact were made in the lower court.

The bill was brought to enjoin the defendants from combining and conspiring to interfere with the plaintiffs in pursuing their trade of brick and stone pointers. The purpose of the bill as stated in the prayers for relief was to enjoin the defendants (1) from combining and conspiring in any way to compel L. P. Soule and Son Company, or any other person, firm or corporation, by force, threats, intimidation or coercion, to discharge the complainants in the bill of complaint, to wit: Robert H. Pickett, Charles A. Pickett, Thomas J. Lally and Walter H. Wilkins, or to refrain from further employing them in and about their trade and occupation; (2) from combining and conspiring to compel the owners of the so-called Ford Building on Ashburton Place in the City of Boston to break or decline to carry out their said contract with the complainant Robert H. Pickett; and (3) from combining and conspiring to interfere with the said complainants, or any of them, in the practice of their trade and occupation, or to prevent them from obtaining further employment thereat.

The defendants were the officers of two unincorporated bricklayers' unions, to wit, Unions No. 3 and No. 27, and of one stone masons' union, to wit, Union No. 9. The plaintiffs also undertook to make each one of the three unincorporated unions parties defendant. The Bricklayers' Union No. 27 seems from the evidence not to have been concerned in the matters in dispute. For this reason we shall not refer to it again except to show later on that there is no evidence that it took part in the matters here in question. The individual defendants were one Driscoll, the walking delegate of the Bricklayers' Union No. 3, one Walsh, the walking delegate of the Stone Masons' Union No. 9, and other persons who were officers of those two unions.

It appears from the evidence that the trade of brick and stone pointing is a trade which, in the neighborhood of the city of Boston at any rate, has been carried on to some extent as a separate trade for nearly if not quite one hundred years. It further appears that there are now some forty-five men engaged in that trade in the vicinity of that city.

The trade of a brick or a stone pointer consists in going over a building (generally when it is first erected) to clean it and to put a finish on the mortar of the joints. Apparently in the city of Worcester, and to some extent in the city of Boston, this work of pointing is done by bricklayers and stone masons.

The dispute which gave rise to the suit now before us had its origin in a set of rules adopted in January, 1905, by the Bricklayers' and Masons' International Union of America, to which the two unions here in question were subordinate. This set of rules contained a provision that bricklaying masonry should consist (*inter alia*) of "all pointing and cleaning brick walls," and that stone masonry should consist (*inter alia*) of the "cleaning and pointing of stone work." The practical working of the

[1] The fifth, sixth, eighth, and ninth paragraphs of the headnote have been omitted.

principles of brick and stone masonry as defined in these rules was left to the subordinate unions.

By the Constitution, By-Laws and Rules of Order of the Bricklayers' Union No. 3, it is provided that members shall not accept employment "where a difficulty exists in consequence of questions involving the rules which govern the Union," and that any member violating a law of the union shall on conviction "be reprimanded, suspended or fined at the discretion of the Union." No similar provision appears in the extract from the Constitution of the Stone Masons' Union which was in evidence, but it is not a violent assumption from the action of the masons and from the testimony of Walsh, the walking delegate of the Stone Masons' Union, that the members of the Masons' Union stood on the same footing as the members of the Bricklayers' Union in this respect.

In other words, the make-up of the two unions was such that any member of a subordinate union (which had adopted a working rule containing in substance the provisions of the working rules of the International Union as to cleaning and pointing buildings) who continued to work on a job on which a pointer was at work was liable to be reprimanded, fined or suspended.

This brings us to the action taken by the unions here in question.

There was an executive committee of the two unions. On July 28, 1905, this executive committee voted "that beginning September 18, 1905, no member of the Bricklayers' and Masons' unions of Boston and vicinity, will work on any building where the contractor will not agree to have the pointing done by bricklayers or masons."

This action of the executive committee was formally adopted by the Bricklayers' Union No. 3, and seems to have been informally adopted by the Stone Masons' Union No. 9. In pursuance thereof the following circular letter was issued: "The Bricklayers' and Masons' Unions of Boston and vicinity have voted that no bricklayer or mason will work for any firm or contractor who will not employ bricklayers or masons to do the pointing of brick, terra cotta and stone masonry. This action to go into effect September 18, 1905."

In September, 1905, L. D. Willcutt and Son as general contractors were erecting (among other buildings) a stone building on the corner of Massachusetts Avenue and Boylston Street in Boston. On the eighteenth day of that month, Mr. L. D. Willcutt of that firm was notified that if he did not discharge the pointers who were working for his firm in pointing that building all the masons and bricklayers working for his firm on other buildings in Boston (all of whom were union men) would strike. Thereupon he suspended the work which was being done by the pointers on the building on the corner of Massachusetts Avenue and Boylston Street. This evidence was admitted to show that there was a general scheme that where pointing was given to any one beside union bricklayers and stone masons there would be a strike.

On November 13, 1905, the defendant Walsh, the walking delegate of the Stone Masons' Union No. 9, and the defendant Driscoll, the walking delegate of the Bricklayers' Union No. 3, came to the Ford Building, for which the corporation of L. P. Soule and Son Company were the general contractors, and found that the cleaning and the pointing of that building were being done under a contract between the

owners of the building and Robert H. Pickett, one of the plaintiffs here. They then went to a brick building which was being erected by the L. P. Soule and Son Company as contractors, a cold storage warehouse on Eastern Avenue, and there Driscoll notified the men that the pointing at the Ford Building was being done by pointers. In consequence all the bricklayers employed by the L. P. Soule and Son Company on the cold storage building, fifty in all, being union men, struck work on that or the next day. The next day, November 14, Walsh went to a stone building which was being erected by the same corporation for the International Trust Company on the corner of Arch Street and Devonshire Street, and told the workmen there of the pointing on the Ford Building; whereupon all the stone masons working there, five or six in all, being union men, struck work.

This bill was filed in the Superior Court on November 21, 1905. It seems to have come on for hearing on December 5, 1905. As we have said, the evidence was taken by a commissioner, a final decree in favor of the plaintiffs on all three grounds was made on December 11, without any special findings of fact, and the case is here on appeal from that decree.

It appeared from the testimony of Parker F. Soule (an officer of the L. P. Soule and Son Company) that it was cheaper to make a contract with pointers for the work of pointing and cleaning than to employ stone masons and bricklayers to do that work. It appeared from other evidence that the wages of a bricklayer or stone mason were fifty-five cents an hour, while pointers are paid three dollars for a day of eight hours, or thirty-seven and one half cents an hour. It further appeared from Mr. Soule's testimony that he preferred to give the work to the pointers because in cleaning a building acid has to be used, and, if the acid is used to excess, stains are caused which in some instances it is impossible to "get out"; and that he did not think that the bricklayers and stone masons were competent to use these acids. He also preferred to give the work to the pointers because the work which is done by the pointers usually is done by contract, in which case the general contractor who employs the pointers is relieved from responsibility on account of accidents which may occur because of the fact that the work is done on a swinging stage, at times at great heights. Again it appeared from the evidence that L. P. Soule and Son Company were not the only contractors who thought that they got better work at a smaller cost and with less liability by making a contract with stone pointers for the doing of this work than by employing stone masons and bricklayers to do it.

All this was explained to the walking delegate of the Bricklayers' Union here in question at an interview between Mr. Soule and the walking delegate of that union held within two days of the strike. It also appeared that at that interview the delegate told Mr. Soule that, while it had been against the rules of the union that any member should take piece work, the taking of piece work recently had been allowed; whereupon Mr. Soule told him that "if he had any members of his union who were reliable men, whom we could have confidence enough in to let a contract to, who would give prices as low, . . . he would have no trouble in getting all the stone pointing there was going." No offer to make a contract on these terms was made, and on the evidence it must be assumed that there was nothing in this statement of the defendant Walsh.

It further appeared from the evidence that the brick and stone pointers of Boston applied to the Building Trades Council for a charter. It is stated in the record of

the Brick Masons' Union No. 3, that "the said pointers about a year ago applied to the A. F. of L. for a charter, which was denied them, the American Federation of Labor taking the stand that brick and stone pointing was a part of the bricklayers' and masons' trade." On September 11, 1905, the Brick Masons' Union No. 3 voted to "file a protest to the B. T. C. against their granting a charter to the brick and stone pointers of Boston," and on September 18 it was voted "that this Committee [*sic*] send communication to B. T. C. requesting that body not to grant a charter to the so-called brick and stone pointers." It was admitted that the men engaged in the business of brick and stone pointers were not qualified for the business of bricklayers and stone masons.

There was evidence that at the interview between Driscoll and Mr. Willcutt, Mr. Willcutt told Driscoll that he did not believe that, when there were twelve hundred men in the union and thirty pointers outside, all this fuss was being made to get the pointers' work for the union men; that he thought it was "simply a question of dictation to us;" and on Mr. Willcutt's asking him (Driscoll) "Do you really want it or do you want to drive the men out of business?" Driscoll smiled and said: "That is a charitable way of looking at it."

There seem to be three causes of action upheld by the decree.

In the first place, Robert H. Pickett, one of the plaintiffs, had a contract with the owners of the Ford Building and was at work under it when the defendants struck. He seeks protection from a strike on L. P. Soule and Son Company to force the owners of the Ford Building to give this work to the unions and to take it away from him. Except for the fact of this contract, in which the plaintiff Robert H. Pickett alone was concerned, the first and second causes of action are alike.

The second cause of action consists in the effort of all the plaintiffs to be protected from being discharged or not employed by the L. P. Soule and Son Company because the defendants struck work for that corporation so long as that corporation worked on a building on which Robert H. Pickett was employed by the owners of that building.

Finally, the plaintiffs sought to be protected against a strike by the defendants in order to get the work of pointing for the members of their unions.

No objection has been taken to the bill on the ground of multifariousness. We therefore shall consider all three causes of action.

We will consider first the last of the three causes of action.

The question, so far as this the third cause of action goes (apart from a question of fact which we will deal with later on), is whether the defendant unions have a right to strike for the purpose for which they struck; or, to put it more accurately and more narrowly, it is this: Is a union of bricklayers and stone masons justified in striking to force a contractor to employ them by the day to do cleaning and pointing at higher wages than pointers are paid, where the contractors wish to make contracts with the pointers for such work to be done by the piece because they think they get better work at less cost with no liability for accidents, and where the pointers wish to make contracts for that work with the contractors on terms satisfactory to them?

In other words, we have to deal with one of the great and pressing questions growing out of the existence of the powerful combinations, sometimes of capital

and sometimes of labor, which have been instituted in recent years where their actions come into conflict with the interests of individuals. The combination in the case at bar is a combination of workmen, and the conflict is between a labor union on the one hand and several unorganized laborers on the other hand.

It is only in recent years that these great and powerful combinations have made their appearance, and the limits to which they may go in enforcing their demands are far from being settled.

It is settled however that laborers have a right to organize as labor unions to promote their welfare.

Further, there is no question of the general right of a labor union to strike.

On the other hand it is settled that some strikes by labor unions are illegal. It was held in *Carew* v. *Rutherford*, 106 Mass. 1, that a strike by the members of a labor union was illegal when set on foot to force their employer to pay a fine imposed upon him by the union of which he was not a member, for not giving the union all his work. To the same effect see *March* v. *Bricklayers' & Plasterers' Union No. 1*, 79 Conn. 7. Again, it was held in *Plant* v. *Woods*, 176 Mass. 492, that a labor union could not force other workmen to join it by refusing to work if workmen were employed who were not members of that union. To the same effect see *Erdman* v. *Mitchell*, 207 Penn. St. 79; *O'Brien* v. *People*, 216 Ill. 354; *Loewe* v. *California State Federation of Labor*, 139 Fed. Rep. 71. And see in this connection *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600.

When and for what end this power of coercion and compulsion commonly known as a strike may be legally used is the question which this case calls upon us to decide. In the present state of the authorities it becomes necessary to consider the general principles governing labor unions and strikes by labor unions.

The right of laborers to organize unions and to utilize such organizations by instituting a strike is an exercise of the common law right of every citizen to pursue his calling, whether of labor or business, as he in his judgment thinks fit. It is pointed out in *Carew* v. *Rutherford*, 106 Mass. 1, 14, that in the earlier days of the colony the government undertook to control the conduct of labor and business to some extent, but that later this policy of regulation was abandoned and all citizens were left free to pursue their calling, whether of labor or business, as seemed to them best. This common law right was raised to the dignity of a constitutional right by being incorporated in the Constitution of the Commonwealth. So far as the question now before us goes it is of no consequence whether the right to pursue one's calling (whether it be of labor or of business) is a common law right or a constitutional right, since the violation of it here complained of is on the part of individuals and not on the part of the Legislature. What is of consequence here is that such a right exists. In article 1 of the Declaration of Rights it is declared that "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of . . . acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness." It is in the exercise of this right that laborers can legally combine together in what are called labor unions.

This right of one or more citizens to pursue his or their calling as he or they see fit is limited by the existence of the same right in all other citizens. The right and

the result are accurately stated by Sir William Erle in his book on Trades Unions in these words: "Every person has a right under the law, as between him and his fellow subjects, to full freedom in disposing of his own labor or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others;" cited by this court in *Plant* v. *Woods*, 176 Mass. 492, 498.

We now have arrived at the point where a labor union, being an organization brought about by the exercise on the part of its members of the right of every citizen to pursue his calling as he thinks best, is limited in what it can do by the existence of the same right in each and every other citizen to pursue his and their calling as he or they think best.

In addition to the limitation thus put on labor unions there is a fact which puts a further limitation on what acts a labor union can legally do. That is the increase of power which a combination of citizens has over the individual citizen. Take for example the power of a labor union to compel by a strike compliance with its demands. Speaking generally a strike to be successful means not only coercion and compulsion but coercion and compulsion which, for practical purposes, are irresistible. A successful strike by laborers means, in many if not in most cases, that for practical purposes the strikers have such a control of the labor which the employer must have that he has to yield to their demands. A single individual may well be left to take his chances in a struggle with another individual. But in a struggle with a number of persons combined together to fight an individual the individual's chance is small, if it exists at all. It is plain that a strike by a combination of persons has a power of coercion which an individual does not have.

The result of this greater power of coercion on the part of a combination of individuals is that what is lawful for an individual is not the test of what is lawful for a combination of individuals; or to state it in another way, there are things which it is lawful for an individual to do which it is not lawful for a combination of individuals to do. Take for example the example put in *Allen* v. *Flood* [1898], A. C. 1, 165, of a butler refusing to renew a contract of service because the cook was personally distasteful to him, whereupon, in order to secure the services of the butler, the master refrains from re-engaging the cook whose term of service also had expired. We have no doubt that it is within the legal rights of a single person to refuse to work with another for the reason that the other person is distasteful to him, or for any other reason however arbitrary. But it is established in this Commonwealth that it is not legal (even where he wishes to do so) for an employer to agree with a union to discharge a non-union workman for an arbitrary cause at the request of the union. *Berry* v. *Donovan*, 188 Mass. 353. *A fortiori* the members of a labor union cannot by a strike refuse to work with another workman for an arbitrary cause. For the general proposition that what is lawful for an individual is not necessarily lawful for a combination of individuals see *Quinn* v. *Leathem* [1901], A. C. 495, 511; *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 616; *S. C.* on appeal [1892], A. C. 25, 45; *Gregory* v. *Brunswick*, 6 M. & G. 205; *S. C.* on appeal, 3 C. B. 481. It is in effect concluded by *Plant* v. *Woods*, 176 Mass. 492.

These being the general principles, we are brought to the question of the legality

of the strike in the case at bar, namely, a strike of bricklayers and masons to get the work of pointing, or, to put it more accurately, a combination by the defendants, who are bricklayers and masons, to refuse to lay bricks and stone where the pointing of them is given to others. The defendants in effect say we want the work of pointing the bricks and stone laid by us, and you must give us all or none of the work.

The case is one of competition between the defendant unions and the individual plaintiffs for the work of pointing. The work of pointing for which these two sets of workmen are competing is work which the contractors are obliged to have. One peculiarity of the case therefore is that the fight here is necessarily a triangular one. It necessarily involves the two sets of competing workmen and the contractor, and is not confined to the two parties to the contract, as is the case where workmen strike to get better wages from their employer or other conditions which are better for them. In this respect the case is like *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598; *S. C.* on appeal [1892], A. C. 25.

The right which the defendant unions claim to exercise in carrying their point in the course of this competition is a trade advantage, namely, that they have labor which the contractors want, or, if you please, cannot get elsewhere; and they insist upon using this trade advantage to get additional work, namely, the work of pointing the bricks and stone which they lay. It is somewhat like the advantage which the owner of back land has when he has bought the front lot. He is not bound to sell them separately. To be sure the right of an individual owner to sell both or none is not decisive of the right of a labor union to combine to refuse to lay bricks or stone unless they are given the job of pointing the bricks laid by them. There are things which an individual can do which a combination of individuals cannot do. But having regard to the right on which the defendants' organization as a labor union rests, the correlative duty owed by it to others, and the limitation of the defendants' rights coming from the increased power of organization, we are of opinion that it was within the rights of these unions to compete for the work of doing the pointing and, in the exercise of their right of competition, to refuse to lay bricks and set stone unless they were given the work of pointing them when laid. See in this connection *Plant* v. *Woods*, 176 Mass. 492, 502; *Berry* v. *Donovan*, 188 Mass. 353, 357.

The result to which that conclusion brings us in the case at bar ought not to be passed by without consideration.

The result is harsh on the contractors, who prefer to give the work to the pointers because (1) the pointers do it by contract (in which case the contractors escape the liability incident to the relation of employer and employee); because (2) the contractors think that the pointers do the work better, and if not well done the buildings may be permanently injured by acid; and finally (3) because they get from the pointers better work with less liability at a smaller cost. Again, so far as the pointers (who cannot lay brick or stone) are concerned, the result is disastrous. But all that the labor unions have done is to say you must employ us for all the work or none of it. They have not said that if you employ the pointers you must pay us a fine, as they did in *Carew* v. *Rutherford*, 106 Mass. 1. They have not undertaken to forbid the contractors employing pointers, as they did in *Plant* v. *Woods*, 176 Mass. 492. So far as the labor unions are concerned the contractors can employ pointers if they choose, but if the contractors choose to give the work of pointing the bricks and stones

to others the unions take the stand that the contractors will have to get some one else to lay them. The effect of this in the case at bar appears to be that the contractors are forced against their will to give the work of pointing to the masons and bricklayers. But the fact that the contractors are forced to do what they do not want to do is not decisive of the legality of the labor union's acts. That is true wherever a strike is successful. The contractors doubtless would have liked it better if there had been no competition between the bricklayers' and masons' unions on the one hand and the individual pointers on the other hand. But there is competition. There being competition, they prefer the course they have taken. They prefer to give all the work to the unions rather than get non-union men to lay bricks and stone to be pointed by the plaintiffs.

Further, the effect of complying with the labor unions' demands apparently will be the destruction of the plaintiffs' business. But the fact that the business of a plaintiff is destroyed by the acts of the defendants done in pursuance of their right of competition is not decisive of the illegality of the acts. It was well said by Hammond, J. in *Martell* v. *White*, 185 Mass. 255, 260, in regard to the right of a citizen to pursue his business without interference by a combination to destroy it: "Speaking generally, however, competition in business is permitted, although frequently disastrous to those engaged in it. It is always selfish, often sharp, and sometimes deadly."

We cannot say on the evidence that pointing is something foreign to the work of a bricklayer or a stone mason and therefore something which a union of bricklayers and stone masons have no right to compete for or insist upon, and so bring the case within *Carew* v. *Rutherford*, 106 Mass. 1; *March* v. *Bricklayers & Plasterers Union No. 1*, 79 Conn. 7; and *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600. On the contrary the evidence shows that in Boston the pointing is done to some extent by bricklayers and stone masons, and there is no evidence that the trade of pointers exists outside that city.

The protest of the defendant unions against the plaintiffs being allowed to organize a pointers' union is not an act of oppression. It is not like the refusal of the union in *Quinn* v. *Leathem* [1901], A. C. 495, to work with the non-union men or to admit the non-union men to their union. The defendants' unions are not shown to be unwilling to admit the plaintiffs to membership if they are qualified as bricklayers or stone masons. But the difficulty is that the plaintiffs are not so qualified. They are not bricklayers or masons. The unions have a right to determine what kind of workmen shall compose the union, and to insist that pointing shall not be a separate trade so far as union work is concerned. They have not undertaken to say that the contractors shall not treat the two trades as distinct. What they insist upon is that if the contractors employ them they shall employ them to do both kinds of work.

The application of the right of the defendant unions, who are composed of bricklayers and stone masons, to compete with the individual plaintiffs, who can do nothing but pointing (as we have said), is in the case at bar disastrous to the pointers and hard on the contractors. But this is not the first case where the exercise of the right of competition ends in such a result. The case at bar is an instance where the evils which are or may be incident to competition bear very harshly on those interested, but in spite of such evils competition is necessary to the welfare of the community.

So far as previous decisions go the case which comes nearest to the case at bar in the kind of question raised is that of *Allen* v. *Flood* [1898], A. C. 1. In that case there was a dispute between shipwrights and boiler makers as to iron work in shipbuilding. It was stated by some of the judges (see for example Lord Watson at p. 99; Lord Herschell at p. 129; Lord Macnaghten at p. 151) that it was lawful for either to strike to get this work from the other. But the decision in *Allen* v. *Flood* went off on another ground. See Lord Halsbury, Ch. in *Quinn* v. *Leathem* [1901], A. C. 495.

The defendants have urged upon us the case of *Bowen* v. *Matheson*, 14 Allen, 499. But although so far as the third cause of action here in question is concerned we have reached the result arrived at in that case, we have reached it on other grounds. That case went up on demurrer and the ground on which that case was decided was that on the allegations in the declaration it was to be treated as one of the class of cases of which *Parker* v. *Huntington*, 2 Gray, 124, is the leading case in this Commonwea'th, and *Bilafsky* v. *Conveyancers Title Ins. Co.*, *ante*, 504, is the last, namely, cases in which the allegations of conspiracy are not allegations of a tortious act in and of themselves, but are simply allegations that the defendants joined in doing acts otherwise alleged to be tortious. It is not now material to inquire whether *Bowen* v. *Matheson* should or should not have been held to belong to this class of cases, for it is settled in this Commonwealth, as we have already said, that the line within which a combination of individuals like a labor union must confine its actions is drawn much closer than in case of the same individuals acting separately.

The plaintiffs have asked us to find on the evidence that the actions of the unions and of the business agents and other officers and of the members in compelling L. P. Soule and Son Company to discharge "the plaintiffs was due in part to a desire to further and protect their own interests, or what they conceived to be such, but more to a reckless and wanton, if not malicious, disregard of the rights of the plaintiffs and of others engaged in the business of pointing and to a determination to force them out of business and thereby deprive them of their accustomed means of earning a livelihood."

We find on the evidence that the plaintiffs have not made out the fact that the defendants' action was due to a reckless and wanton, if not malicious disregard of the rights of the plaintiffs and of others engaged in the business of pointing. Under these circumstances we do not find it necessary to decide what would have been the result had we found that fact. See in this connection Bowen, L.J. in *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 615.

It follows that the third clause of the decree, which follows the third prayer of the bill, must be stricken out.

This brings us to the legality of the strike by the union bricklayers and masons employed by the L. P. Soule and Son Company on other buildings because that corporation was do'ng work on a building on which work was being done by pointers employed not by the L. P. Soule and Son Company but by the owners of the building.

That strike has an element in it like that in a sympathetic strike, in a boycott and in a blacklisting, namely: It is a refusal to work for A, with whom the strikers have no dispute, because A works for B, with whom the strikers have a dispute, for the purpose of forcing A to force B to yield to the strikers' demands. In the case at bar the strike on the L. P. Soule and Son Company was a strike on that contractor to

force it to force the owner of the Ford Building to give the work of pointing to the defendant unions. That passes beyond a case of competition where the owner of the Ford Building is left to choose between the two competitors. Such a strike is in effect compelling the L. P. Soule and Son Company to join in a boycott on the owner of the Ford Building. It is a combination by the union to obtain a decision in their favor by forcing third persons who have no interest in the dispute to force the employer to decide the dispute in their (the defendant unions') favor. Such a strike is not a justifiable interference with the right of the plaintiffs to pursue their calling as they think best. In our opinion organized labor's right of coercion and compulsion is limited to strikes against persons with whom the organization has a trade dispute; or to put it in another way, we are of opinion that a strike against A, with whom the strikers have no trade dispute, to compel A to force B to yield to the strikers' demands, is an unjustifiable interference with the right of A to pursue his calling as he thinks best. Only two cases to the contrary have come to our attention, namely: *Bohn Manuf. Co.* v. *Hollis*, 54 Minn. 223, and *Jeans Clothing Co.* v. *Watson*, 168 Mo. 133. The first of these two cases was overruled on this point in *Gray* v. *Building Trades Council*, 91 Minn. 171. The conclusion to which we have come is supported by *My Maryland Lodge* v. *Adt*, 100 Md. 238; *Gray* v. *Building Trades Council*, 91 Minn. 171; *Purington* v *Hinchliff*, 219 Ill. 159; *Beck* v. *Railway Teamsters' Protective Union*, 118 Mich. 497; *Crump* v. *Commonwealth*, 84 Va. 927; *State* v. *Glidden*, 55 Conn. 46; *Purvis* v. *United Brotherhood of Carpenters*, 214 Penn. St. 348; *Gatzow* v. *Buening*, 106 Wis. 1; *Barr* v. *Essex Trades Council*, 8 Dick. 101; *Temperton* v. *Russell* [1893], 1 Q. B. 715; Taft, J. in *Toledo, Ann Arbor & North Michigan Railway* v. *Pennsylvania Co.*, 54 Fed. Rep. 730; *Loewe* v. *California State Federation of Labor*, 139 Fed. Rep. 71; *Hopkins* v. *Oxley Stave Co.*, 83 Fed. Rep. 912; *Casey* v. *Cincinnati Typographical Union No. 3*, 45 Fed. Rep. 135.

It is settled in this Commonwealth by a long line of cases that a defendant is liable for an intentional and unjustifiable interference with the pursuit on the part of the plaintiff of his calling, whether it be of labor or business. *Walker* v. *Cronin*, 107 Mass. 555. *Carew* v. *Rutherford*, 106 Mass. 1. *Vegelahn* v. *Guntner*, 167 Mass. 92. *Plant* v. *Woods*, 176 Mass. 492. *Martell* v. *White*, 185 Mass. 255.

For the reason that the strike on the buildings being erected by the L. P. Soule and Son Company was not a strike in a trade dispute between the union and that corporation, the first and second clauses of the decree were in substance correct. Robert H. Pickett, however, is the only plaintiff who is shown to have had any interest in the work on the Ford Building, and therefore the second clause of the decree alone should stand.[1]

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[1] The material part of the decree was as follows:

" That the respondents in said bill, to wit: The Bricklayers Benevolent and Protective Unions No. 3 and No. 27, The Stone Masons Benevolent and Protective Union No. 9, and each and every member thereof, Jeremiah J. Driscoll, Patrick J. Walsh, Michael J. Shea, J. Cronan, Dennis J. Sullivan, George K. Watson, John P. Burke, J. M. Ryan, Theodore Eldracher, Joseph W. Luke and George J. Twiss, and each of them, their servants, agents, confederates and attorneys, be and hereby are perpetually restrained and enjoined from combining and conspiring in any way to compel L. P. Soule and Son Company, or any other person, firm or corporation, by force, threats, intimidation or coercion, to discharge the complainants in the bill of complaint, to wit: Robert H. Pickett, Charles A. Pickett, Thomas J. Lally and Walter H. Wilkins, or to refrain from further employing them in and about their trade and occupation, and from combining and conspiring to compel the owners of the so-called Ford Building on Ashburton Place in the city of Boston to break or decline to carry out their said contract with the complainant Robert H. Pickett, and from combining and conspiring to interfere with the said complainants, or any of them, in the practice of their trade and occupation, or to prevent them from obtaining further employment thereat."

A few matters of detail remain to be dealt with.

All that the Bricklayers' Union No. 27 seems to have done was to adopt working rules making pointing a part of the trade of bricklaying. There is no evidence that they authorized the sending of the circular letter or took part in the strike. That union and the members of it should be stricken from the decree.

No objection has been taken to the decree in favor of Robert H. Pickett on the ground that damages would have given him adequate compensation for breach of his contract. For that reason it is not necessary to consider whether his proper remedy was an action at law for damages, as in *Carew* v. *Rutherford*, 106 Mass. 1, *Walker* v. *Cronin*, 107 Mass. 555, *Berry* v. *Donovan*, 188 Mass. 353, and *Quinn* v. *Leathem* [1901], A. C. 495.

There is a point of practice which must be noticed. As we have said, the plaintiffs have undertaken to make three unincorporated labor unions parties defendant. That is an impossibility. There is no such entity known to the law as an unincorporated association, and consequently it cannot be made a party defendant. That was conceded in *Taff Vale Railway* v. *Amalgamated Society of Railway Servants* [1901], A. C. 426. The point decided in that case was that the labor union defendant in that case could be sued because it was registered under Trades Union Acts 1871, c. 31, and 1876, c. 22. At law, if the objection is properly taken, every member of an unincorporated association must be joined as a party defendant. In equity, if the members are numerous, a number of members may be made parties defendant as representatives of the class. The practice in Massachusetts in suits against members of unincorporated labor unions generally has been in accordance with these well settled principles. See *Bowen* v. *Matheson*, 14 Allen, 499; *Carew* v. *Rutherford*, 106 Mass. 1; *Plant* v. *Woods*, 176 Mass. 492; *Martell* v. *White*, 185 Mass. 255. A trade union was made a party defendant in *Vegelahn* v. *Guntner*, 167 Mass. 92, and the anomaly seems to have escaped attention. The judge who entered the decree in the case at bar made it apply to the unions "and each and every member thereof." He seems to have treated the case as a case where a numerous body had been properly represented by defendants joined for that purpose. Possibly, so far as the trial of the case was concerned, the members of these two unions were in fact represented by the individual defendants. But there is nothing on the record which justifies a decree against "each and every member" of the three unions on the ground that the defendants were joined as representing the individual members of the unions constituting a numerous class of defendants. The three unions should be stricken from the bill as parties defendant, and proper allegations should be made to bind the members of the two unions as parties defendant. If the individual defendants were proper representatives of the members of the unions in question, and these members would suffer no damage from the bill being so amended now, that can be done. The cases are collected in *Fay* v. *Walsh*, 190 Mass. 374.

Upon the bill being so amended within sixty days the decree may be modified as hereinbefore set forth, and on being so modified, affirmed; otherwise the decree must be reversed. *So ordered.*

F. W. Mansfield, for the defendants.

S. J. Elder & E. A. Whitman, for the plaintiffs.

ABERTHAW CONSTRUCTION COMPANY *v.* C. W. CAMERON *et als.*

SUFFOLK. DECEMBER 3, 1906–FEBRUARY 27, 1907.

194 Mass. 208.

Unlawful Interference — Equity Jurisdiction, To enjoin conspiracy — *Conspiracy — Labor Union — Corporation — Equity Pleading and Practice,* Decree.

A corporation may be enjoined from conspiring with others to interfere unlawfully with the performance of a contract and may be held liable in damages for such interference in the same way and to the same extent that a natural person may be.

In a suit in equity by a contractor to enjoin the officers and members of a labor union from conspiring to compel the plaintiff, by threats of causing a strike of his employees, to employ only union men in certain work constituting part of the construction of a church under a contract between the plaintiff and a corporation, called a board of directors, which was one of the defendants, and for the assessment of damages caused by the illegal acts of the defendants, it appeared that the defendants other than the corporation conspired in the manner charged in the bill before they were aided by the defendant corporation, that this defendant was informed by one of the other defendants that a general strike was proposed if the plaintiff continued to employ a certain non-union workman, that the members of the board, which constituted the defendant corporation, had an interview with the plaintiff in which they requested him either to discharge the non-union workman or to procure employment for him elsewhere or to permit them to do so, and that they did this to avoid a general strike which they deemed probable if the workman was permitted to remain and which if it occurred would delay the completion of the church, that about a week later the defendant corporation voted to request the plaintiff to cease work as it had decided to finish the building in another way, and communicated this vote to the plaintiff, and that the plaintiff was ejected from the church and prevented from continuing the performance of his contract. *Held,* that the vote of the defendant corporation and its communication to the plaintiff, followed by the breaking of the contract, warranted a finding that the defendant corporation participated in an unlawful conspiracy to compel the plaintiff to employ only union workmen, and that in pursuance of such conspiracy the defendants caused a breach of the contract between the plaintiff and the defendant corporation without any just cause or lawful provocation; but that a finding was warranted that the defendant corporation did not participate in such conspiracy by the previous interview of the members of the board with the plaintiff, which was advisory only and was not intended to aid in the coercive measures or active interference adopted by the other defendants. . . .[1]

BILL IN EQUITY, filed in the Supreme Judicial Court on February 23, and amended on February 28 and March 3, 1906, by a corporation, organized under the laws of the State of Maine and having its usual place of business in Boston, against the business agent, the president, the vice-president, the secretary and the treasurer of the Carpenters District Council of Boston and Vicinity, a voluntary association, and against the same persons individually and as members of that association, and against the members of a committee of that association, against certain other persons individually and as officers of another voluntary association known as the Building Trades Council, against the Christian Science Board of Directors, "a corporation duly organized according to law, of said Boston," and against the secretary and two other members of that corporation individually and as agents of the corporation, to enjoin the defendants other than the defendant corporation from inducing that defendant to break its contract with the plaintiff under which the plaintiff had agreed to construct and to complete by March 12, 1906, a concrete

[1] The third paragraph of the headnote has been omitted.

floor in the auditorium and corridors of a structure known as the First Church of Christ, Scientist, on Falmouth Street in Boston, to enjoin the defendant corporation from breaking such contract, and to enjoin all the defendants from interfering by threats, intimidation or coercion with any of the persons employed by the plaintiff and from combining and conspiring to compel the plaintiff in the prosecution of its business to employ only members of the Carpenters District Council or of any other union and to discharge any persons in its employ who were not members of such union or of any other labor union, praying for a temporary and a permanent injunction and for an assessment of damages.

The case was referred to Wade Keyes, Esquire, as master. He filed a report in which he found for the plaintiff. Later the case was heard upon the master's report and the defendants' exceptions thereto by *Sheldon*, J., who overruled all the exceptions except one, which is described below, and reported the case for determination by the full court as follows:

"This case came on for hearing upon the filing of the master's report and the exceptions of the defendants thereto. I overruled all the exceptions except the second exception of the defendant Christian Science Board of Directors.

"The plaintiff contended that the defendant Christian Science Board of Directors became a co-conspirator with the other defendants from the time when they first sought to induce the plaintiff to discharge the workman Stark. Against the plaintiff's objection I ruled that the Christian Science Board of Directors became co-conspirators only on its overt act in breaking its contract with the plaintiff on Wednesday, February 21, 1906, and therefore sustained the second exception so far as the same applies to the item of $15.12, cost of reinstating work destroyed, and $3.13, cost of advertising in the public press, said items of damage having accrued before said breach of contract. Thus modified I ordered the master's report to be confirmed.

"The plaintiff asked for a permanent injunction in the following form:

"'That the following respondents named in said bill, to wit, the Carpenters District Council of Boston and Vicinity, and each and every member thereof, C. W. Cameron, W. D. McIntosh, S. F. McArthur, H. M. Taylor, J. E. Potts, J. F. Medland, John McLeod, and Patrick Slow, individually and as officers and agents of said Carpenters District Council, and the Christian Science Board of Directors, and the servants, agents, confederates and attorneys of each of the foregoing persons, associations and corporations, and all others who may act in concert with them or by their direction, be, and they hereby are, perpetually restrained and enjoined from combining and conspiring to compel said complainant in the prosecution of its business to employ members of said Carpenters District Council or of any other labor organization so called, and to refrain from employing any person or persons who may be non-union men so called; and said respondents, their servants, agents, confederates and attorneys are further enjoined and restrained, for the purpose of compelling the complainant to employ exclusively in the transaction of its work and business members of said Carpenters District Council or of any other labor union, from breaking or combining or conspiring to break, or causing to be broken, any contract or contracts which the complainant may now or hereafter have, either with any of the defendants herein or with any other person or corporation whatsoever; and for said purpose from

directly or indirectly calling or combining or conspiring to call or cause a strike of workmen or a cessation of work by workmen now employed or hereafter to be employed by the complainant in the transaction of its business, and for such purpose from interfering by threats, intimidation, or coercion, or any other obstructive action, with any of the persons now employed or whom said complainant may hereafter seek to employ in the transaction of its business, and for said purpose from combining and conspiring to interfere with the said complainant in the practice and prosecution of its occupation and business, and to prevent or obstruct it from obtaining further contracts therefor and employment therein, or from securing the services of workmen to carry out such contracts.'

"The defendants other than the Christian Science Board of Directors objected to any injunction which should apply to any part of the plaintiff's business except the particular work being done by the plaintiff under contract with the defendant Christian Science Board of Directors, which work was completed on March 12, 1906. Against the plaintiff's objection I ruled that the injunction should apply only to said work, and not to other work.

"No question is made that the bill as to the defendants William B. Johnson, Charles Brigham, Charles C. Coveney, John Doe and Richard Roe, and the Building Trades Council should be dismissed without costs.

"All questions of pleading are waived.

"At the request of the plaintiff I report the case to the full court, such decrees to be entered as, on the master's report, law and justice require."

G. W. Anderson (*E. H. Ruby* with him), for the plaintiff.

F. W. Mansfield, for the defendants other than the Christian Science Board of Directors.

Braley, J. The plaintiff's bill prays for injunctive relief, and the assessment of damages against the defendants who are alleged to have formed a conspiracy to compel it under penalty of a general strike of its employees to hire only union workmen in the erection of a large building then in process of construction under its contract with the Christian Science Board of Directors, one of the defendants. Upon the principal question, the master to whom the case was referred found in favor of the plaintiff, and his report was confirmed except as to the time when this defendant became a party to the conspiracy. By the modification of the single justice it was held that it did not unlawfully participate until February 21, 1906, when the board voted to request the plaintiff to cease work as they had decided to finish the building in another way. The master not only finds that this action was taken and communicated to the plaintiff, who refused compliance, but that on February 15, 1906, after having been informed by the defendant Cameron that a general strike was proposed if the plaintiff continued to employ one Stark, who did not belong to either of the unions, the members of the board had an interview with the plaintiff. In this interview they requested the plaintiff either to discharge Stark, or procure employment for him elsewhere, or permit them to do so, and this action is found to have been taken to avoid a general strike which they believed probable if he was permitted to remain. By the pleadings and in the report this defendant is described as a corporation known as the Christian Science Board of Directors, and there is no statement or finding that this body was representative rather than original, or that the authority

of the board if treated as the corporation itself was limited by any by-law or vote. The conspiracy charged and proved was a combination to coerce the plaintiff to accede to the demands of Cameron and the organizations named as defendants, in which this defendant joined. Being a body corporate gave it no immunity from the consequences, for which it could be held liable as if it had been a natural person. *White* v. *Apsley Rubber Co.*, 194 Mass. 97, and cases cited. *Buffalo Lubricating Oil Co.* v. *Standard Oil Co.*, 106 N. Y. 669. But while in a conspiracy at common law an overt act need neither be alleged nor proved, as the offence consists in the unlawful combination, there must be a mutual understanding whereby all the conspirators work together for a common end. *Commonwealth* v. *Hunt*, 4 Met. 111. *Commonwealth* v. *Eastman*, 1 Cush. 189, 224. *Revere Water Co.* v. *Winthrop*, 192 Mass. 455. The plans of the other defendants were well on foot when this defendant who had been informed of their object intervened, and sought by its representations to persuade the plaintiff to avoid all future difficulty, by discharging an employee who had not become obnoxious to the corporation, except by reason of its pecuniary interest that there should be no unreasonable delay in the completion of its church. The master did not report the evidence, and the usual rule applies. But beyond this special finding he made no further finding as to the conduct of the members of the board before the vote was taken. It is plain that the interview with the accompanying proposals was advisory only and not intended to re-enforce or aid in the coercive measures adopted by the unions and their representatives, or to form a part of the measures of active interference which the other defendants were taking to enforce their demand. The ruling that the proposals made at this conference did not make them co-conspirators by participation therefore must be sustained.

In the general scheme of the conspiracy the breaking of the contract[1] which subsequently followed was an important element, and when taken in connection with the action of the other bodies of which the board had knowledge, the concluding finding that the defendants against whom this bill is prosecuted "conspired together to compel the plaintiff to employ only union carpenters" and "that in pursuance of such conspiracy they caused a breach of the existing contract of employment between the plaintiff and the defendant board, without any just cause or lawful provocation" was well warranted. *Walker* v. *Cronin*, 107 Mass. 555. *South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905], A. C. 239, 250, 253.

The remaining question relates to the form and scope of the decree. An interlocutory injunction having issued under the first prayer of the bill, the plaintiff fully performed its contract, completing the work more than two months before the case appears to have been ripe for the entry of a final decree. The plaintiff is not content with a decree in which relief is confined to the unlawful acts of the defendants in connection with the contract described in its bill, but asks for a permanent injunction

[1] The vote of the defendant corporation was communicated to the plaintiff in a letter from the architect of the corporation, found by the master to have been its agent for the purpose. This letter contained the following sentence: "I am instructed by the Directors of the First Church of Christ, Scientist, to inform you that it is their wish that you retire immediately from the work at the First Church of Christ, Scientist. It has been decided by them to do the remainder of the work included in your contract in a different manner, commencing at one o'clock today."

About twelve o'clock on the same day the agent of the defendant corporation ordered the plaintiff to leave the job, and, upon its refusal to do so, this agent called the watchman employed by the directors to police the building, who forcibly, but without actual physical violence, ejected the foreman of the plaintiff from the job and escorted him to the street, and the men employed by the plaintiff followed.

restraining the unions and their officers from any interference in the future if the plaintiff in the performance of other contracts chooses to employ non-union workmen. To this proposition the answer is plain. By the terms of the report under which the case is before us while it is stated that all questions of pleading are waived, it is also stated, that such decrees are to be entered on the master's report as law and justice require. The master's report rests upon the frame of the bill with which it must be considered, not only for the purpose of the modification, but as to the extent of the relief to which the plaintiff is entitled. This issue was not presented by the pleadings, and consequently it neither has been heard and determined by the master nor by the single justice. If the pleadings are disregarded it would be equally extraordinary to enter such a decree upon the report of a master to whom this question was not referred, and upon which he has not passed. The conspiracy in which the defendants are found to have participated was an unjustifiable wrong causing temporary damage. *Martell* v. *White*, 185 Mass. 255. But while unlawful conduct has been proved in the present case, this fact raises no presumption that in the future the defendants will engage in similar wrongful acts. *Hatch* v. *Bayley*, 12 Cush. 27, 30. *Phelps* v. *Cutler*, 4 Gray, 137. *Stewart* v. *Thomas*, 15 Gray, 171. *Baldwin* v. *Parker*, 99 Mass. 79. *Kline* v. *Baker*, 106 Mass. 61. And if such a combination exists it must be pleaded and proved before appropriate relief can be granted. See *Plant* v. *Woods*, 176 Mass. 492, 496, 497; *Reynolds* v. *Everett*, 144 N. Y. 189. The plaintiff is entitled to a decree with costs confirming the master's report as modified, awarding execution for the damages assessed less the diminution thus caused, and the injunction heretofore issued may be made perpetual if it desires. *Ordered accordingly.*

Gabriel E. Beekman *v.* George E. Marsters.

Suffolk. March 26, 1907 — April 6, 1907.

195 Mass. 205.

Unlawful Interference — Equity Jurisdiction, To enjoin unlawful interference with contract. — *Words*, "Malice."

. . .[1] It is no defence to a suit in equity to enjoin the defendant from inducing a third person to break his contract with the plaintiff, that the defendant induced the third person to break the contract merely for the purpose of increasing his own business and with no desire to injure the plaintiff.

In a suit in equity to enjoin the defendant from inducing a third person to break his contract with the plaintiff, proof that the defendant with knowledge of the contract between the plaintiff and the third person intentionally and without justification induced the third person to break it is proof of malice within the meaning of that word as used in opinions of this and other courts. . . .[1]

Where a plaintiff in equity proves that the defendant unlawfully interferes with or threatens to interfere with his rights under a contract and further proves that damages will not afford him an adequate remedy, he is entitled to an injunction.

Loring, J. This suit came before the single justice on the report of a master to which no exceptions had been taken by either party, and was reserved by him for our consideration and determination without any ruling or decision having been made.

[1] The first, fourth, fifth, and sixth paragraphs of the headnote have been omitted.

The master found that on November 21, 1906, a contract was made between the plaintiff and the Jamestown Hotel Corporation. That corporation is erecting or has erected a hotel within the grounds of the Jamestown Exposition to be held between April 26 and November 30 of this year. This hotel is known as the Inside Inn, and is to be the only hotel within the exposition grounds. The plaintiff is the proprietor of a tourist agency, having an office at 293 Washington Street, Boston. By the contract between the plaintiff and the Hotel Corporation the plaintiff agreed to represent the Hotel Corporation throughout the New England States, to establish sub-agencies in that territory, and to use every possible endeavor personally and through his agents to book persons for the Inside Inn; and the defendant agreed: "That you [the plaintiff] shall be our exclusive agent in said territory;" to pay the plaintiff twenty-five cents a day for each person sent by him to the hotel; and to furnish the plaintiff with all necessary "literature."

Immediately upon being thus appointed the exclusive agent of the Hotel Corporation the plaintiff prepared and issued a "Fall Edition" of his "Tickets and Tours," in which *inter alia* a description is given of the Jamestown Exposition and of the Inside Inn. Following this is the statement that the plaintiff has been appointed New England agent for the exposition "and exclusive representative of the Inside Inn."

The defendant is found by the master to be a ticket and tourist agent, with an office at 298 Washington Street, Boston. On January 11, 1907, he went to Norfolk, Virginia, and called upon the officers of the Hotel Corporation there. At this time he "had seen the contract between the complainant and the hotel corporation, but had not read it, and knew that the company had practically consummated a contract making Beekman its sole representative in New England." The defendant at this interview told these officers "that it was a mistake for the corporation to give an exclusive agency in New England to any one man, and that more business would be brought to the company if all agents were given equal terms," and to enforce his arguments stated that the business done by the plaintiff was insignificant and that the statement was false which was made in the summer edition of his "Tickets and Tours" that certain persons therein named had his tickets and tours for sale. It appeared that the summer edition of this catalogue had been shown to the Hotel Corporation by the plaintiff when he made his contract with it.

The master found that "As a result of the solicitations or representations made by the respondent, the Jamestown Hotel Corporation on or about January 11, 1907, entered into an oral contract with him, whereby it was agreed that the respondent should have the same rights that had been given to the complainant, and that he should be paid by the corporation twenty-five cents *per capita* per day for each guest whom he should secure for the Inside Inn."

The defendant then wrote to all men named in the plaintiff's catalogue except those having places of business in Canada, "and two or three others who appeared to have an independent agency business," telling them that the plaintiff had not an exclusive agency for New England and suggesting to them that they could get paid on the same footing as that upon which the plaintiff and the defendant were to be paid, if they chose to act for themselves and not as sub-agents of the plaintiff. He also wrote to the New York, New Haven, and Hartford Railroad Company, calling attention to the fact that some of the local ticket agents of that railroad company were

advertised by the plaintiff as having his tickets and tours on sale, and suggesting that the railroad company would prefer to have all its agents strictly neutral in dealing with tourist concerns.

With respect to these letters the master made this finding: "The purpose of the respondent in sending the letters above mentioned appears from the letters themselves. I do not find that the respondent was actuated by malice toward the complainant."

The master further found that "The Jamestown Hotel Corporation has never at any time rescinded, or attempted to rescind, its said contract with the complainant;" that "The complainant has never waived any of his rights under the contract, and has never consented to any modification or alteration thereof except with reference to the bond" which is not material; and further, that "The Inside Inn is the only hotel which is located, or, under the contract of the company with the exposition, can be located, within the exposition grounds. The exclusive right to act as agent for the Inside Inn within the New England territory is a valuable right."

Lastly he has found: "There is a strong probability that a large tourist business will be done between Boston and New England and the Jamestown Exposition between April and the close of the exposition in November, and that many passengers will arrange for tours through various tourist agencies. In all probability many more passengers will buy tours and tickets from the complainant if he is the exclusive agent in New England for the Inside Inn than will be the case if other tourist agents also book guests or issue coupons or other devices which are accepted by the Hotel Corporation for accommodations. The damage which he will sustain if the respondent or other persons are allowed to act as agents or to book guests or issue coupons in this manner is incapable of accurate ascertainment. The loss to the complainant will not be merely the loss of the commission of twenty-five cents *per capita* per day, which would otherwise be received from the hotel, but it will be the loss of profits on tours which he might otherwise be able to arrange."

The result of the findings of the master must be taken to be that the defendant induced the Hotel Corporation to break its contract with the plaintiff, but that he did not do this to spite the plaintiff or for the purpose of injuring him, but for the purpose of getting for himself (the defendant) business which the plaintiff alone was entitled to under the contract with the Hotel Corporation, that is to say, to get business which the defendant could not get if the Hotel Corporation kept its agreement with the plaintiff.

Three defences have been set up by the defendant, namely: First, that he had a right to do what he did; second, that the plaintiff does not come into court with clean hands; and third, that the plaintiff has an adequate remedy at law by bringing an action for damages.

1. So far as the first defence is concerned, it is in effect that where A. is under a contract to serve the plaintiff for a specified time, the defendant, knowing that contract to be in existence, is justified in hiring A. away from the plaintiff before the expiration of that time, by giving him (A.) higher wages if he (the defendant) thinks that to be for his (the defendant's) pecuniary benefit. The ground on which the defendant bases this contention is that he has a right to compete with the plaintiff and that the right of competition is a justification for thus hiring away the plaintiff's servant.

We say that this is in effect the defence set up here because it has been settled in Massachusetts that there is no distinction between a defendant's enticing away the plaintiff's servant and a defendant's inducing a third person to break any other contract between him and the plaintiff. That was decided by this court in *Walker* v. *Cronin*, 107 Mass. 555; see p. 567. See also *Moran* v. *Dunphy*, 177 Mass. 485. In other words, this court there adopted the conclusion reached by the majority of the judges of the Queen's Bench in *Lumley* v. *Gye*, 2 El. & Bl. 216. This is also the settled law of the Supreme Court of the United States. *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway*, 151 U. S. 1. And it has been affirmed in England. *Bowen* v. *Hall*, 6 Q. B. D. 333. *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88. *Glamorgan Coal Co.* v. *South Wales Miners' Federation* [1903], 2 K. B. 545; *S. C.* on appeal, *sub nominee South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905], A. C. 239.

No case has been cited which holds that a right to compete justifies a defendant in intentionally inducing a third person to take away from the plaintiff his contractual rights.

Not only has no case been cited in which that has been held, but no case has been cited in which that contention has been put forward.

It happens, however, that Mr. Justice Wells in defining the rights of competition has denied the existence of such a justification. In discussing the first count in *Walker* v. *Cronin*, 107 Mass. 555, 564, he said: "Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ*, unless some superior right by contract or otherwise is interfered with." And it also happens that in *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88, Darling, J., in discussing the rights of a labor union to induce the plaintiff's employers to break their contract of apprenticeship with him, denied it. He there said: "To resume, I think the plaintiff has a cause of action against the defendants, unless the court is satisfied that, when they interfered with the contractual rights of plaintiff, the defendants had a sufficient justification for their interference — to use Lord Macnaghten's words. This sufficient justification they may have had, and they may prove it; but the facts found by the county court judge and relied on by him as enough do not amount to one; for it is not a justification that 'they acted *bona fide* in the best interests of the society of masons,' *i.e.*, in their own interests. Nor is it enough that 'they were not actuated by improper motives.' I think their sufficient justification for interference with plaintiff's right must be an equal or superior right in themselves, and that no one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong understanding of his own rights, or without malice, or *bona fide*, or in the best interests of himself, nor even that he acted as an altruist, seeking only the good of another and careless of his own advantage."

It is hard to see how this court could have decided *Garst* v. *Charles*, 187 Mass. 144, as it did were it the law that self interest is a justification for intentionally interfering with a plaintiff's contractual rights. The same is true of *Bowen* v. *Hall*, 6 Q. B. D. 333, if not of *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88.

The argument here urged by the defendant comes from not distinguishing between two cases which not only are not the same but are altogether different so far as the question now under consideration is concerned.

If a defendant by an offer of higher wages induces a laborer who is not under contract to enter his (the defendant's) employ in place of the plaintiff's, the plaintiff is not injured in his legal rights. But it is a quite different thing if the laborer was under a contract with the plaintiff for a period which had not expired and the defendant, knowing that, intentionally induced the laborer to leave the plaintiff's employ by an offer of higher wages, to get his (the laborer's) services for his (the defendant's) benefit.

A plaintiff's right to carry on business, that is, to make contracts without interference, is an altogether different right from that of being protected from interference with his rights under a contract already made. The existence of both rights and the difference between the two is recognized by Wells, J. in *Walker* v. *Cronin*, 107 Mass. 555; the first count in that case went on the first right, and the second and third counts on the second right. Again, the existence of the two is recognized and stated by Holmes, J. in *May* v. *Wood*, 172 Mass. 11, 14, 15.

Where the plaintiff comes into court to get protection from interference with his right of possible contracts, that is, of his right to pursue his business, acts of interference are justified when done by a defendant for the purpose of furthering his (the defendant's) interests as a competitor. It was this right that the plaintiff came into court to assert in *Carew* v. *Rutherford*, 106 Mass. 1, *Walker* v. *Cronin*, 107 Mass. 555 (so far as the first count was concerned), *Vegelahn* v. *Guntner*, 167 Mass. 92, *Plant* v. *Woods*, 176 Mass. 492, *Martell* v. *White*, 185 Mass. 255, *Berry* v. *Donovan*, 188 Mass. 353, and *Pickett* v. *Walsh*, 192 Mass. 572 (so far as the third prayer for relief was concerned); while the cases of *Walker* v. *Cronin*, 107 Mass. 555 (so far as the second and third counts were concerned), *May* v. *Wood*, 172 Mass. 11, *Garst* v. *Charles*, 187 Mass. 144, and *Pickett* v. *Walsh*, 192 Mass. 572 (so far as the second prayer for relief was concerned), are cases of the second class.

There are statements in opinions in Massachusetts and in England that a defendant is not liable for interference with a plaintiff's rights in both of these two classes of cases unless he acts maliciously within the meaning of malice as used in these opinions. In the case at bar there was no necessity of proving spite or ill will toward the plaintiff. This is not a case where there was an abuse of what, if done in good faith, would have been a justification, but a case where the defendant with knowledge of the contract between the plaintiff and the Hotel Corporation intentionally and without justification induced the Hotel Corporation to break it. That is proof of malice within the meaning of that word as used in these opinions. *South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905], A. C. 239.

We do not rest our decision in this case (as we have been urged to do by the plaintiff) on cases like *Peabody* v. *Norfolk*, 98 Mass. 452, *Lumley* v. *Wagner*, 1 DeG., M. & G. 604, *Stiff* v. *Cassell*, 2 Jur. (N. S.) 348, *Donnell* v. *Bennett*, 22 Ch. D. 835, *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.* [1901], 2 Ch. 37, *Manhattan Manuf. Co.* v. *New Jersey Stock Yard Co.*, 8 C. E. Green, 161, *Western Union Telegraph Co.* v. *Rogers*, 15 Stew. (N. J.) 311, and *Baker* v. *Pottmeyer*, 75 Ind. 451. Those are cases where the plaintiff, having a contract which a court of equity would

specifically enforce in whole or in part, brings a bill for specific performance against the other party to the contract, and as ancillary to a degree for specific performance against the other party to the contract asks that the third person who is about to contract or has contracted with him be also enjoined. The plaintiff made out his right to maintain this suit against the defendant alone by proving that he in fact induced the Hotel Corporation to break its contract with the plaintiff. In case of ordinary contracts (that is to say, contracts which will not be specifically enforced in equity), a plaintiff does not go far enough to render a defendant liable for unlawful interference with his contractual rights, when he proves that the defendant, in using the ordinary methods of promoting and increasing his own business, obtained business from the other party to the plaintiff's contract which that other party could not have given him without breaking his contract with the plaintiff, and that this was known to the defendant. To charge the defendant in such a case the plaintiff must prove that it was the act of the defendant which brought about the breach of the contract with the plaintiff.

Whether contracts which equity will specifically enforce stand on a different footing need not be considered.[1]

. . . . . .

3. The finding of the master as to the damages which the plaintiff is likely to suffer shows that an action at law would not give him an adequate remedy. Where the plaintiff proves that the defendant unlawfully interferes or threatens to interfere with his business or his rights under a contract, and further makes out in proof that damages will not afford an adequate remedy, equity will issue an injunction. The issuing of injunctions in *Vegelahn* v. *Guntner*, 167 Mass. 92, and similar cases, the last of which is *Pickett* v. *Walsh*, 192 Mass. 572, are decisions directly in point. As to which see *Sherry* v. *Perkins*, 147 Mass. 212.

The terms of the injunction should be in substance that the defendant be restrained from directly or indirectly acting as agent of the Hotel Corporation within the New England States, and from preventing or seeking to prevent, directly or indirectly, the plaintiff from acting as exclusive agent of the Hotel Corporation for that territory. *So ordered.*

G. R. Nutter (*H. F. Lyman* with him), for the plaintiff.

C. W. Rowley, for the defendant.

Edward T. Reynolds *et ali.* v. George H. E. Davis *et als.*

Essex. March 13, 1907 — April 3, 1908.

198 Mass. 294.

Unlawful Interference — Labor Union — Strike — Equity Pleading and Practice, Parties.

The legality of a combination not to work for an employer, made by persons who are not under contract to work for him, depends on the purpose for which the combination is formed.

A combination not to work for an employer, made by persons who are under contract to work for him in violation of that contract, is necessarily an unlawful interference with the employer's business.

[1] A portion of the opinion which has only indirect connection with the subject matter of this report is omitted.

Reynolds *v.* Davis.

Whether a combination not to work for an employer, made by persons who are not under contract to work for him, for the reason that the employer has posted "open shop rules" declaring, among other things, that "there shall be no discrimination for or against any workman on account of membership or non-membership in any organization", which is a strike against working under those rules and to compel a return to carrying on the shop under a previously existing arrangement with a trades union, is an illegal interference with the employer's business, depends on the character of the arrangement which it is the purpose of the strike to re-establish.

A combination not to work for an employer, made by persons who are not under contract to work for him, for the purpose of forcing the employer to submit to a delegate body of employees all questions between him and his individual employees, is an unlawful interference with the employer's business. KNOWLTON, C.J., dissenting on the ground that the rules and by-laws, which were held by the majority of the court to show the purpose above stated, merely provided a proper method of preliminary investigation.

The rules of a trades council, which was an unincorporated association made up of delegates from the local trade unions with which it was affiliated, provided that every grievance which a member of a local union had against his employer was to be investigated by the executive committee of the council, that, if the employer did not comply with the decision of the executive board he should be reported to the council as "unfair", and that, upon his being declared "unfair" by the council, the executive board again should "interview" the employer, and, if he continued in his refusal to comply with the demands of the council, the board should "at once remove all union men" from his employ and no union man should "be allowed to go to work" for him until he should be "again placed upon the fair list by the . . . council." *Held*, that by these rules the members of the association undertook to decide each case of an individual grievance between a single employee and his employer, and that a strike for the purpose of imposing the adoption of these rules upon an employer against his will should be enjoined as an unlawful interference with his business. KNOWLTON, C.J., dissenting.

A strike, to force employers to comply with the decision of a delegate body of employees as to whether a single employee is or is not to work for his employer, is in the nature of a sympathetic strike and will be restrained by injunction. KNOWLTON, C.J., dissenting.

In case of a strike which is an unlawful interference with the business of an employer, such employer is entitled to an injunction restraining the strikers from doing any acts whatever, peaceful or otherwise, in furtherance of their unlawful combination, including the payment of strike benefits and putting the employer on an "unfair" list.

A trade union and a trades council, which are unincorporated associations, cannot be made parties to a suit in equity.

Where it is desired to make the members of an unincorporated association defendants in a suit in equity, this cannot be done by an allegation in the bill that John Doe and Richard Roe and sundry persons, whose names and whose residences or places of business are unknown to the plaintiffs, are the members of the association.

Where it is desired to make the members of an unincorporated association defendants in a suit in equity, and the persons desired as defendants are members of a class who have a common interest and are too numerous to be made parties individually, even if their names are known to the plaintiff, the proper way to bring them before the court is to join as defendants persons who are proper representatives of the class, describing the class to which they belong and alleging them to be proper representatives of it, stating that the members are too numerous to be joined individually as defendants.

LORING, J. This is a bill brought apparently by the members of nine firms and thirty-five individuals, and purports to be brought against seven unincorporated associations (a building trades council and six local trade unions) and twenty-eight individuals. The relief sought is an injunction restraining the defendants from interfering with the business respectively carried on by the several plaintiffs. The place of business of each and all the plaintiffs and defendants is in the city of Lynn.

The case was sent to a master and came on for hearing in the Superior Court on the master's report to which no exceptions had been taken. A final decree was entered

directing that the bill be dismissed as to three of the plaintiffs named on a motion to that effect made by them, and as to one defendant on the merits, and restraining the remaining defendants in certain particulars therein set forth. From this decree the defendants who were enjoined took an appeal which is now before us.

The principal contention of the defendants is that on the facts set forth in the master's report the bill should have been dismissed.

It appears from the master's report that before May 1, 1906, "although some of them [the plaintiffs] had been running what was practically an 'open shop,' yet many of the complainants had at least some sort of verbal understanding, if not an actual agreement, with the various unions respecting hours, wages, apprentices, and the employment of non-union help, which would expire on that date."

At some time not fixed by the master the plaintiffs (with the exception of Keyes, Eastman and Swan), acting with others, signed and issued the following advertisement which was headed "Lynn Open Shops":

"The following firms propose in the future to do a free and unrestricted business under the following Open Shop Rules, which will enable us to pay our employees according to their merits, and insure to the public a fair and honest return for their money, which cannot be done under the Closed Shop.

"Open Shop Rules.

"1. There shall be no discrimination for or against any workman on account of membership or non-membership in any organization.

"2. There shall be no restriction as to the number of apprentices to be employed when of proper age, or as to the nature of the work which workmen of any class shall do.

"3. That eight (8) hours shall constitute a day's work.

"4. Overtime shall not be permitted except when absolutely necessary, and under no circumstances to be continued, all overtime to be paid for as regular time. Sundays and Legal Holidays, or the days on which the same are celebrated, are to be paid for as double time.

"5. Grievances arising among the workmen will be settled in conference between the employer and the workmen already involved."

This advertisement was signed by twenty-nine master carpenters and builders, eight master painters and paper hangers, one machinist and millwright, six plumbers, steamfitters, and tinsmiths, four stairbuilders and dealers in building supplies, one dealer in lumber and "builders' finish," and three carrying on the business of "Gas and Electrical Construction."

The six trade unions named as defendants are unions of (1) carpenters, (2) lathers, (3) painters, decorators, and paperhangers, (4) plumbers, (5) sheet metal workers, and (6) steamfitters and helpers.

On May 1, 1906, these "Open Shop Rules" were posted by the plaintiffs in their several shops, and thereupon the union men members of the unions named as defendants left work with "some" exceptions; in these instances the union men "remained at work after the open shop rules were posted and until a nonunion man was put at work on the same job with themselves, when they immediately left. In one or two cases the union men returned when the non-union men ceased working."

Without going into details it is manifest that the strike here in question was a strike against the open shop, as the plaintiffs proposed to carry on an open shop, and for the closed shop as it had previously been carried on by many of the plaintiffs and by the defendants.

It is settled in this Commonwealth that the legality of a combination not to work for an employer, that is to say, of a strike, depends (in case the strikers are not under contract to work for him) upon the purpose for which the combination is formed, — the purpose for which the employees strike.

We have excluded all cases where the employees are under contract to work for their employer, because it is now settled in this Commonwealth at least that competition and similar defenses are not a justification for inducing an employee or other person to commit a breach of a contract and thereby interfering with the business of the employer. *Beekman* v. *Marsters*, 195 Mass. 205. From that it would seem to follow necessarily that, in case of persons under a contract to work, a strike or combination not to work, in violation of that contract, to secure something not due to them under that contract, would be a combination interfering without justification with the employer's business. See in this connection *Aberthaw Construction Co.* v. *Cameron*, 194 Mass. 208.

Instances of strikes where the purpose sought to be obtained by the strike has been held to make the combination not to work an illegal one, are to be found in *Carew* v. *Rutherford*, 106 Mass. 1; *Plant* v. *Woods*, 176 Mass. 492; *Pickett* v. *Walsh*, 192 Mass. 572; *Aberthaw Construction Co.* v. *Cameron*, 194 Mass. 208.

What, then, on the facts found in the master's report was the purpose of the strike here in question?

The question of the purpose of the strike does not seem to have been directly in the master's mind in framing his report, and for that reason his findings of fact are not directed to this issue. But in our opinion the facts were abundantly proved which made the strike here in question an illegal combination, that is to say, an interference with the business which each plaintiff was conducting, for which interference there was not a justification.

The occasion of the strike, as we have said, was the posting of the open shop rules. The strike was manifestly a strike against working under those rules. To understand the significance of the defendants' combination not to work under these open shop rules it is necessary to state what was proved to have been the condition under which many of the plaintiffs had been conducting their business before these rules were posted.

Most of the plaintiffs had been conducting their business under an oral understanding, if not an actual agreement, with the defendant local unions.

It appears that the defendant local unions were affiliated with the Building Trades Council of Lynn and Vicinity, also named as a party defendant. The Building Trades Council of Lynn and Vicinity appears to be an unincorporated association made up of delegates from the local unions with which it is "affiliated," including the six local unions named here as defendants.

By the working and trade rules of this council every grievance which a member of a local union affiliated with the council has against his employer is to be investigated by the executive board of the council, and if the employer does not comply

with the decision of the executive board he is reported to the council as "unfair," and upon being declared "unfair" by the council the executive board is "to again interview" the employer and if the employer continues in his refusal to comply with the demands of the council the board "shall at once remove all union men" from his employ, and "no union man shall be allowed to go to work" for him until he is "again placed upon the fair list by the . . . council."

In other words, the members of the defendant unions, by the terms of their own rules, undertook to decide each case of an individual grievance between a single employee and his employer, to decide what should be done by the employer as well as by the employee, and to enforce compliance with its decision by threatening and instituting a strike in which all members were bound to join. What we mean by an individual grievance is (for example) the discharge by his employer of a member of the union for drunkenness or inefficiency.

This statement of the make up of the defendant unions and the Trades Council with which they are affiliated makes plain what the plaintiffs were aiming at in the open shop rules. And it also makes plain what was the main or one of the main purposes for which the strike in question was instituted by the individual defendants.

The strike in question was a combination for the purpose of making the Trades Council, composed of delegates from the unions of which the individual defendants are members, the arbiter of all questions between individual employees and their employers.

It purports to include questions arising under contracts still in existence between the two. To enforce the employer to submit to a delegate body of employees his rights under an existing contract by a combination for that purpose is not a justifiable interference with their employer's business.

And in cases arising outside existing contracts it is an attempt to force compliance on the part of employers with the decision of this delegate body of employees as to whether a single employee is or is not to work for the employer, which decision is to be enforced by a strike. Such a strike would be a strike in the nature of a sympathetic strike, that is to say, it is a strike not to forward the common interests of the strikers but to forward the interests of an individual employee in respect to a grievance between him and his employer where no contract of employment exists.

We do not mean to say that a labor union cannot combine to support a committee to take up individual grievances in behalf of the several members. What we now decide to be illegal is a combination that such grievances (that is to say, grievances between an individual member of a union and his employer which are not common to the union members as a class) shall be decided by the employees and that decision enforced by a strike on the part of all. In this respect this case comes within the principle upon which the second point in *Pickett* v. *Walsh*, 192 Mass. 572, was decided. See p. 587, *et seq.*

It follows that the plaintiffs were entitled to an injunction restraining the defendants from combining together to further the strike in question, and from doing any acts whatever, peaceful or otherwise, in furtherance thereof, including the payment of strike benefits and putting the plaintiffs on an unfair list.

The Building Trades Council and the six unions were not properly joined as parties defendant as unincorporated associations, *Pickett* v. *Walsh*, 192 Mass. 572,

and they should be stricken from the title of the cause. The pleader seems to have thought that the reason why all the members of these unincorporated associations need not be joined as defendants is because their names "are to your complainants unknown," and he has undertaken to make them parties by an allegation "that John Doe and Richard Roe and sundry other persons whose names and whose several residences or places of business are to your complainants unknown, are the remaining members of said respondent unions and the respondent Building Trades Council, and are participants in the unlawful acts hereinafter set forth." The rule of equity pleading which dispenses with the joinder of all members of an unincorporated association depends upon their being members of a class who have a common interest and are too numerous to be made individually parties defendant even if their names are known to the plaintiff. The proper way of bringing them before the court is to join as parties defendant persons who are alleged to be and are proper representatives of the class, describing the class to which the members belong and stating that the members are too numerous to be joined as parties defendant. See *Pickett* v. *Walsh*, 192 Mass. 572.

No objection has been made to the joinder as parties plaintiff in this suit of the nine firms and thirty-five individuals, each carrying on a separate business.

It is manifest that the decree entered is not so sweeping as that to which the plaintiffs were entitled. No appeal however was taken by the plaintiffs, and of this the defendants do not complain.

But the bill must be amended as to the parties defendant. Upon the bill being amended within sixty days, the decree may be modified as hereinbefore set forth, and on being so modified, affirmed. Otherwise the entry must be bill dismissed.

So ordered.

KNOWLTON, C.J., [*dissenting*]. The opinion agreed to by a majority of the court in this case, seems to me erroneous in the grounds on which it purports to rest, and, if it should pass without comment, it would be, in my judgment, misleading. To most of the doctrines stated in it I heartily agree. With the final disposition of the case I am satisfied. If the decision were put on the ground that the strike was for a closed shop in the sense that the shop should be closed arbitrarily to all workmen not members of the union, not because such workmen were personally objectionable in any particular, nor because there was not work enough for all the members of the union if non-union men were employed, but to compel all workmen to join the union for the purpose of creating a monopoly in the labor market, whereby to be able to contend successfully with employers whenever a controversy should arise, I should cheerfully concur in it. A strike to compel a closed shop, merely to accomplish such a purpose, would not be justifiable on principles of competition, either as against non-union workmen or as against the employer, but would be unlawful for reasons stated in *Berry* v. *Donovan*, 188 Mass. 353, *Plant* v. *Woods*, 176 Mass. 492, and *Pickett* v. *Walsh*, 192 Mass. 572.

This opinion enters a field which has not been very much traversed by the courts. It holds this strike unlawful because of the rules and by-laws of the labor union. Rules and by-laws of labor unions have not commonly received the animadversion of the courts, because, as regulations for the internal administration of the affairs of organizations established for a lawful purpose, they are usually designed, in a reasonable way, to promote the objects of the organization.

It is held universally in law, and is conceded generally in public opinion, that a labor union, established for the promotion of the interests of its members in a reasonable way, is a justifiable and commendable organization.

It is right that all the members of such a union should unite for the protection of the interests of every individual member. If the feeblest of its members has a just grievance as an employee against their common employer, it is proper that the whole combination should act together to obtain redress of the wrong. The most effectual way of enforcing the right of every member to just treatment from his employer, in reference to wages, hours of labor and other things affecting his interests, is by withholding the labor of the union until justice is done. To make this a potent inducement the union must be able to act as one body, and to hold every member to the performance of his duties to his fellow members, so that all may be a united force. Of course there must be a method of determining what action, if any, shall be taken by the union in any case of an alleged grievance. Such a determination cannot properly be made without an investigation of the facts. Such an investigation ordinarily would involve conferences with the employer, and negotiations to see whether he would consent to an improvement of the conditions, if they should appear to be unjust to the employee. Such conferences and negotiations, without which ordinarily no labor union would be justified in striking, call for a representative or representatives of the union to present its side of the controversy to the employer, and to act for the union in the maintenance of its interests against the opposite party. In such cases the employer and employee often come together as adverse parties, each contending for that which seems for his advantage. The final determination of the position to be taken by the union may be by a vote of its members. It may be by the action of a board of officers to whom the union intrusts this duty. In favor of the latter method is the fact that, in times of excitement, assemblies of men and women often act hastily under a misapprehension of the facts, and under an impulse of passion aroused by inflammatory appeals to their feelings. But, in one way or another, such determinations must be made, and must be treated as finally settling the position which the union is to take for itself, as a party dealing with an adverse party in reference to its supposed rights. Of course, if the employer takes a different view, neither is bound by the action of the other, and each may make any lawful effort to prevail in the contest with the other.

In the opinion the present strike is condemned because of the rules which govern the union. Under these, every grievance is to be investigated by the executive board of the council. Surely this is right and proper. If the employer refuses to do that which the executive board thinks he ought to do, the facts are reported by the board to the next meeting of the building trades council, with a recommendation that he be declared unfair. If he is then declared unfair by the building trades council, that is equivalent to a decision that he is in the wrong. It is then the duty of the executive board to again interview the employer, and if he fails to comply with the conditions that the building trades council deems just, a strike is to be declared and maintained by the union until he complies with these conditions.

It is to be noticed that this course of proceeding is entirely for the guidance of the members of the union. The employer takes such measures and acts upon such principles as he chooses for his own guidance. If the result is a failure to agree, then each stands upon his rights, and it is a question which can force the other to yield, or how they can afterwards reach a compromise. The trades council is no more the arbiter of

questions between individual employees and their employers than the employer is. The trades council, as a representative official board, decides for one party and determines its action, and the employer decides for the other party and determines his action. Neither assumes to determine anything for the other, but the action of each is governed by his or its own determination.

I do not see how any rule can be more just and proper for the guidance of a labor union when a dispute arises between its members, or any one of its members, and the employer. Suppose the case is a reduction of wages by the employer which the members of the union deem unjust. What more fair or equitable method of dealing with such a supposed injustice could be devised? To say that a strike founded on such a reduction is illegal because of a rule providing this method of dealing with the grievance, is, in my judgment, equivalent to saying that no labor union shall be permitted to do anything to promote the proper objects of its organization.

It is objected that the rule does not exclude questions arising under contracts subsisting between the employer and individual members of the union. Why should it exclude any question which arises under a complaint of an alleged grievance? Every member of the union is entitled to the support of his fellow members in regard to any question directly affecting his rights as an employee, if he is in the right and his employer is in the wrong. How can the union ascertain whether action should be taken in his behalf without an investigation? If the investigation should show that the aid which he seeks is to enable him to break a contract with his employer, it is to be assumed that the council would immediately decline to help him. If a strike should be ordered to compel an employer to submit to a breach of contract by one of his employees, such a strike would be illegal because it would be for an illegal object, not because of the method prescribed by the rules of the union for investigating the matter, or for declaring a strike. It must be assumed that these rules were adopted to be properly applied in proper cases. They do not purport to authorize the trades council to declare a strike for an illegal object. It is to be presumed that the council would refuse to declare a strike in any case in which the investigation showed that the desired object was illegal. In the present case there is no testimony nor suggestion that one of the purposes of the strike was to compel submission by an employer to a breach of his contract by an employee.

In framing rules for a labor union, it would be unreasonable and impracticable to mention expressly all possible cases in which a strike ought not to be ordered, and, in terms, to forbid action in all such cases.

I find nothing in this part of the rules and by-laws except that which I should expect to find in those of any well-organized labor union. I discover nothing in the master's report or the evidence to indicate that these rules were intended to be used for the unlawful promotion of a purely sympathetic strike, or that they ever were so used. I have endeavored to show that if any member of a union should have a grievance as an employee against his employer, even if it was not common to members of the union as a class, it would be the duty of his fellow-members, in accordance with fundamental principles of labor unionism, to unite for the redress of the grievance, even by striking, if that should be necessary.

So far as appears, the posting and publication of the open shop rules, and the employment or attempt at employment of non-union men, which were the only matters complained of by the defendants, had a relation to members of each of the local

unions before the court, as direct as it had to any other union men. Members of these unions were employed in the shops of the plaintiffs. If the ground of complaint had been a proper subject for adverse action by an individual workman, it would have been a proper subject for investigation and action by the union of which he was a member.

Because the opinion in this case makes the decision turn upon the rules and by-laws to which I have referred, I do not agree with it.

F. W. Mansfield, for the defendants.

R. Clapp, for the plaintiffs.

Robert Casson *et ali. v.* W. D. McIntosh *et als.*

Suffolk. March 12, 1908 — July 7, 1908.

199 Mass. 443.

Equity Jurisdiction, Contempt in violation of injunction — *Labor Union — Unlawful Interference.*

At the hearing on a petition for an attachment for contempt in the violation of a temporary injunction issued in a suit brought by a firm of contractors against the members of various labor organizations to restrain them from interfering with the plaintiff's business by intimidating or interfering with any person in his employment, it appeared that the respondents were respectively the president and business agent of a district council made up of delegates of several local unions, and that they were named in, and had had served upon them the injunction alleged to have been violated; that one P., the "business agent" of one of the local unions whose delegates composed the district council, interviewed one of the petitioner's workmen and told him to leave the work because the petitioner was an "unfair" firm, that thereafter the workman received a notice signed by one W., the secretary of the district council, stating that charges had been made against him for violating an article of the council's constitution in working for an "unfair" firm after having been told by a business agent to leave the work, which article subjected the workman to a fine for so doing. The notice further directed the workman to attend a meeting of the council. At that meeting, one respondent presided and the other acted as temporary secretary. Neither P. nor W. was present. The judge who heard the case found from the foregoing facts that the respondents were responsible for the notice sent to the petitioner's workman, adjudged them in contempt for that offense and imposed fines. *Held*, that the fines should be returned to the respondents, since there was no evidence that would warrant a finding that they took any part directly or indirectly in the issuing of the notice.

Petition, filed in the Superior Court for the county of Suffolk October 8, 1906, for an attachment for alleged contempt in the violation of a temporary injunction issued by that court against the defendants in a bill in equity entitled *Robert Casson et al.* v. *Amalgamated Woodworkers of America et al.* The petitioners were contractors.

The petition was heard before Fox, J., who, as stated in the opinion, adjudged the respondents McIntosh and Cameron in contempt and ordered them to pay fines, and they appealed.

The facts are stated in the opinion.

G. F. Williams (*J. C. Madden* with him), for the respondents.

R. Clapp (*J. J. Feely* with him), for the petitioners.

Loring, J. This case comes up on a report. It is a petition for attachment for contempt for violation of a temporary injunction issued by the Superior Court in June, 1906. The injunction restrained McIntosh and Cameron, as well as others, from (among other things) "interfering with the complainants' business by obstructing, annoying, intimidating or interfering with any person or persons who now are or may hereafter be in their employment." The ground of the petition was intimidation of two of the petitioners' employees, Godfray and Andrews by name. The only witnesses called by the petitioners were the two employees and one Watson, the secretary of the

Carpenters' District Council, a body made up of delegates from the several unions over which it had jurisdiction.

The two employees testified in substance that they were members and one Potts was the business agent of Local Union 33 of the United Brotherhood of Carpenters and Joiners of America; that during the week of August 20, 1906, Potts called upon them while at work for the petitioners and told them that the petitioners had been declared to be an "unfair" firm. Godfray testified that Potts told him that he would have "to quit this noon," while Andrews testified that Potts told him that "it was up to me whether I should quit or not." Afterwards each employee received a notice dated September 11, 1906, signed by Watson (the other witness called by the petitioners), who (as we have said) was secretary of the Carpenters' District Council, notifying him that "charges have been preferred against you for violation of Article 4, C. D. C. on refusing to stop when ordered." They were further notified to attend a meeting of the council on September 20, "for trial of the charge."

Article 4 referred to in the notice is in these words: "That all firms or jobs placed unfair, it shall be the duty of the business agents to remove all men in their employ; any member failing to comply with the demand of the business agent, he shall prefer charges against said member at the next meeting of the executive Board; upon conviction thereof, he shall be fined not less than $10."

There was also evidence that McIntosh presided over the meeting held on September 20, and that at that meeting charges against both employees were read by Cameron,[1] who acted as temporary secretary, and that the two employees were called upon to defend themselves.

It is not necessary to state in detail what took place then and afterwards, for the judge "found the testimony sufficient to establish the responsibility of McIntosh and Cameron for the notice of September 11." The whole finding is in these words: "From the foregoing facts, I found the testimony sufficient to establish the responsibility of McIntosh and Cameron for the notice of September 11, and that notice, taken in connection with the rules of the association and the doings of Potts, amounts to a demand upon the men to whom it was sent to quit work under the threat of a fine. I, therefore, found that McIntosh and Cameron violated the injunction and ordered them to pay a fine of $20 each." The general finding that McIntosh and Cameron violated the injunction is a conclusion based upon the special finding stated above. The sole question before us is whether the evidence was sufficient to warrant the special finding, and it is therefore of no consequence that the evidence warranted a finding (if it did warrant such a finding) that what took place on September 20 was a violation of the injunction by these defendants although they were not responsible for the notice of September 11.

As to the special finding, the notice of September 11 was signed by Watson, not by the respondents. There was no evidence that Watson in signing it acted under the direction of the respondents or either of them. Nor was there any evidence that the respondents took any part in the issue of the notice directly or indirectly. The fact that McIntosh and Cameron acted on the notice at the meeting on September 20 is not evidence that they were responsible for the notice.

[1] It appeared that McIntosh was president and Cameron was "business agent" of the Carpenters' District Council, and that Potts was "simply a delegate to the council from" the local union of which Godfray was a member.

It follows that the special finding of the judge was not warranted by the evidence, and that the fines paid into court by McIntosh and Cameron must be returned to them.

The Amalgamated Woodworkers of America, Local No. 24, and the other unincorporated unions were improperly joined as defendants, and the title of the suit has been changed accordingly. *So ordered.*

L. D. Willcutt and Sons Company *v.* Jeremiah J. Driscoll *et als.*

Suffolk. March 19, 1907–October 24, 1908.

200 Mass. 110.

Equity Jurisdiction, To enjoin unlawful interference with business — *Unlawful Interference — Conspiracy — Labor Union*, Coercion by threats of fines.

A building contractor can maintain a suit in equity to enjoin the members of a labor union, who are engaged in a lawful strike for higher wages and shorter hours of work, from causing those of his day laborers who are members of the union to leave his employ by threatening to impose fines upon them under a by-law of the union. Following *Martell* v. *White*, 185 Mass. 255. Sheldon, J. & Knowlton, C.J., dissenting, on the ground that the fining of the members of a union, under a by-law previously adopted, for refusing to join in a justifiable strike is lawful and properly may be resorted to in trying to maintain the strike. Distinguishing the point actually decided in *Martell* v. *White*. Loring, J., concurring in the decision of the majority of the court, on the ground that the present case cannot be distinguished from *Martell* v. *White* and that, although the doctrine of that case is not to be extended, the purposes of justice do not require that that case should be overruled as to the point that the use of threats of fines to exert coercion is illegal.

Bill in equity, filed in the Superior Court on July 19, 1906, and amended on November 22, 1906, by a corporation, engaged in the business of constructing buildings, against (as amended) certain individuals as officers and members of two voluntary unincorporated associations, the Bricklayers' Benevolent and Protective Union Number Three, and the Stonemasons' Benevolent and Protective Union Number Nine, both of Boston and the vicinity, and all other members of those unions, being upwards of eighteen hundred in number and most of them to the plaintiff unknown, the individuals named being the officers chosen by those unions for the management of their affairs and for doing the acts for and in behalf of the unions which were complained of in the bill, to enjoin the defendants from combining and conspiring by threats or intimidation to prevent any person or persons from entering the employ of the plaintiff or remaining therein, and particularly by the imposition of fines and penalties upon members of those unions who desired to work for the plaintiff, from inducing or persuading in any way persons then, or thereafter, in the employ of the plaintiff from leaving such employment and breaking their contracts of employment, from imposing any fines or penalties or exercising any compulsion of any kind or using any threats or intimidation to prevent any person or persons, whether members of those unions or not, from entering into and continuing in the employ of the plaintiff, and for further relief.

In the Superior Court the case was heard by *Gaskill*, J., who made a memorandum of findings of fact, which so far as they are necessary to an understanding of the case appear in the opinion of the majority of the court. The judge concluded his findings of fact with the following statement:

L. D. Willcutt & Sons Co. v. Driscoll.

"The question resolves itself into this: In case of a justifiable strike, has the contractor the right to invoke the aid of the court to prevent the labor union from imposing a fine or taking action to impose one upon one or more of its members under its rules to induce them to leave the contractor's employ to his injury. I think not.

"I am of opinion that Reagan was not justified in threatening the imposition of a fine. Decree for plaintiff against Reagan, bill dismissed as to other defendants." Reagan threatened a journeyman mason who previously had been a member of one of the unions with a fine of $100 if he continued to work. The judge made a final decree enjoining the defendant Reagan, and dismissing the bill as to the other defendants. The plaintiff appealed.

The case was argued at the bar in March, 1907, before *Knowlton*, C.J., *Morton*, *Loring*, *Sheldon*, and *Rugg*, JJ., and afterward was submitted on briefs to all the justices.

E. A. Whitman, for the plaintiff.

F. W. Mansfield, for the defendants.

Hammond, J. This bill, although originally brought against two unincorporated associations or labor unions by name, has now been amended, so that it runs only against certain individuals as officers and members of these associations and against the other members of those associations as represented by these individuals. No question is made that the defendants do not sufficiently represent all the members of both unions; and the bill is not open to objection upon this ground. *Pickett* v. *Walsh*, 192 Mass. 572, 589, 590, and cases there cited.

The questions before us are raised upon a report of the facts found by the judge of the Superior Court who heard the case. They grew out of a trade dispute between the plaintiff and the members of the unions who were in its employ. In April, 1906, these unions adopted a code of working rules, in which, beside some minor demands not now material, they demanded that wages be increased five cents an hour, that all foremen should be members of the unions, that the business agent of the unions should be allowed to visit any building under construction to attend to his official duties, and that wages should be paid during working hours. The plaintiff declined to accept these rules, and a strike followed.

By the constitution and rules of the unions it appeared that a code of fines and penalties was established by the International Union, an association composed of these and other similar unions throughout the country, and that this code was being actively enforced by the local unions. One rule provided that any member violating any section of the working code should be fined upon conviction not less than five nor more than twenty-five dollars, one of these sections being that "No member of the Union shall work with a non-union man who refuses to join the Union." Various other penalties were provided, varying from five to five hundred dollars for each offence, to be imposed upon persons designated as "common scabs," "inveterate or notorious scabs," and "Union wreckers," these terms being applied to those who in different ways persist in working after a strike has been called. These fines in their operation are likely to be coercive in their nature.

This code was actively enforced by the unions, and most of the members of the unions who left their work did so through fear of the fines that would be imposed upon them if they continued to work. The defendants Driscoll and Reagan on one

occasion found two men at work for the plaintiff, one a journeyman who had been and the other a foreman who then was a member of the union. Reagan threatened the journeyman with a fine of $100 if he continued to work, and Driscoll notified the foreman that he was called out. Both refused to leave. Driscoll reported the fact at a meeting of the union and a vote was passed that charges be preferred against the men for working contrary to the rules. A preliminary injunction was issued in this case, and no further steps were taken under the vote.

The defendants established strike headquarters, and provided a strike fund from which payments were made to the strikers and other men out of work. Some of the defendants made constant visits to a job of the plaintiff, generally at noon time, to persuade men, whom the plaintiff had hired, to leave its employ. They offered as inducements in some cases to non-union men membership without the full payments usually required, and in other cases work elsewhere. Men frequently left the plaintiff's employ after these talks, in some cases stating that they would like to work but could not run the risk of being fined. The defendant Driscoll induced two men to go who otherwise would have continued at work, by paying them with funds of the unions the wages due them from the plaintiff and providing them with transportation to Utica, New York, where he had secured other work for them.

The plaintiff was constructing other buildings at Fairhaven and at Andover, which were within the districts of other unions; and the union men employed by the plaintiff on those jobs also struck. It was found however that these men were not under the control of the defendants, though it did fairly appear that these strikes were a direct result of the strike in Boston, since all these unions were affiliated together in the International Union and all members of the unions were familiar with what should be done in such cases.

It was admitted that the defendants were not persons of financial responsibility, and the judge found "that the acts of the defendants as above set forth were calculated to interfere and did interfere with the performance of the plaintiff's contracts for the construction of buildings, and had they continued, would have seriously embarrassed the plaintiff in the prosecution of its business, and that such consequences were contemplated by the defendants in their endeavor to force the plaintiff to accept their working rules to govern the management of its business."

As already stated, the strike had four objects. Of these the demand for an increase of wages was properly enforceable by a strike. The demand that wages should be paid during working hours amounts merely to a demand for a shorter day, and also was properly enforceable by a strike. The reasonableness of such demands we have not the means of determining; and it is settled that such matters are best left to be adjudicated in the freedom of private contract between the interested parties. More difficult questions are presented by the demands that all foremen shall be members of the unions, and that the business agent of the unions shall be allowed to visit any building under construction. See as to the first of these points a very interesting article by Professor Smith, 20 Harvard Law Review, 431, note 1. But it is unnecessary under the circumstances to determine these questions, as the plaintiff replied with a bare refusal of all the demands.

We are of opinion therefore that this strike must be regarded as simply a strike for higher wages and a shorter day. It was not a mere sympathetic strike, as in

Pickett v. *Walsh*, 192 Mass. 572, 587, or one whose immediate object was only remotely connected with the ultimate object of the strikers, as in *Plant* v. *Woods*, 176 Mass. 492. It was a direct strike by the defendants against the other party to the dispute, instituted for the protection and furtherance of the interests of the defendants in matters in which both parties were directly interested and as to which each party had the right, within all lawful limits, to determine its own course. Such a strike must be treated as a justifiable strike so far as respects its ultimate object.

But however justifiable or even laudable may be the ultimate objects of a strike, unlawful means must not be employed in carrying it on; and it is contended by the plaintiff that the use of fines and threats of fines, under the circumstances disclosed in the record, are unlawful. The question is stated by the trial judge in the following language: "In case of a justifiable strike, has the contractor the right to invoke the aid of the court to prevent the labor union from imposing a fine [which the court has found to be coercive in its nature] or taking action to impose one upon one or more of its members under its rules to induce them to leave the contractor's employ to his injury?" Under the findings of the judge it would seem that the question is not intended to be quite so broad as otherwise might be inferred from its language. The language is broad enough to include the case where the employee is under a contract to stay with his employer and where to leave would be a violation of that contract. But no such state of things appears upon the record. The plaintiff "hired its masons by the day and paid them on the basis of the number of hours worked, and it might have discharged them and they might have left at the close of any day." The question must therefore be considered as applying only to cases where the employee by leaving violates no contractual right of the employer.

The question how far the imposition of fines by an organization upon its members where the effect is to injure a third party is justifiable, was considered by this court in *Martell* v. *White*, 185 Mass. 255; and it was there adjudged that the imposition of such a fine by which members of the organization were coerced into refusing to trade with the plaintiff, not a member, to his great damage, was inconsistent with the ground upon which the right to competition in trade is based, and as against him was not justifiable. In the course of the opinion the case of *Boutwell* v. *Marr*, 71 Vt. 1, was cited, in which the same conclusion was reached. In *Martell* v. *White* five justices sat, and four of them, being a majority of the whole court, concurred in the ground upon which it was decided. The case was carefully presented by counsel, the questions involved were regarded as important, and there was a difference of opinion among the judges who sat in it. It was therefore considered at great length; and the conclusion was reached after a most exhaustive discussion and the most careful deliberation. It stands as a solemn adjudication by this court after such discussion and deliberation. So far as respects the trend of judicial opinion and authority there has been no change since the decision was announced unfavorable to it or to the ground upon which it was reached. On the contrary, so far as we are aware, whenever the case has been mentioned by members of the profession, whether they be judges engaged in the practical administration of the law, or professors teaching the students of our schools the true theory of legal principles, it has been received with favorable comment. See *Brennan* v. *Hatters of North America*, 44 Vroom, 729; *Allis-Chalmers Co.* v. *Iron Moulders' Union No. 125*, 150 Fed. Rep.

155, 178; 20 Harvard Law Review, 355, 356; 17 Green Bag, 210. There is every reason why the doctrine of *stare decisis* should apply; and, so far at least as respects this Commonwealth, the case must be held as settling the correctness of the principle upon which the decision was based.

That principle, if applicable to the facts of this case, is decisive. The majority of the court are of the opinion that it is applicable, and hence that there should be a decree for the plaintiff enjoining intimidation or coercion by fines.

Under ordinary circumstances this opinion would end here. But inasmuch as a minority of the court still think that the principle laid down in *Martell* v. *White*, with reference to intimidation by fines imposed by an organization upon its members, is not correct, and also, perhaps, that, even if correct, it is not applicable to the facts of this case, and are unwilling to accept that principle as law in this Commonwealth notwithstanding the authority of that case, it may be well to say something in addition to what was there said. We are also somewhat influenced to take this action by reason of the importance of the question and its relation to a part of the law still in the nebulous but clearing stage.

Before entering more fully upon the discussion it is well to get a clear conception of what the case is. To begin with, it is not a contest between the members of two competing labor unions, as was *Plant* v. *Woods*, 176 Mass. 492, nor is it a conflict between an organization and one of its members in a matter in which no third party is interested. Neither does the plaintiff corporation contend that it has any right to compel the intimidated workman to enter its employ. Nor is it seeking, in behalf of a member of a union, to enforce or defend the right of such member to be free from a fine or threat of a fine. The plaintiff has no concern with the imposition of fines by a union upon its members unless, and only so far as, such an imposition is in violation of a right of the plaintiff. Even if the fine be illegal the plaintiff has no standing in court to complain unless some one of its rights is invaded to its damage. In a word, the case is not between the party imposing the fine and the person fined, nor between the person fined as such and a third party who suffers, but on the contrary it is between such third party and the party imposing the fine. If it were only between the person fined and the party imposing the fine, then with some degree of plausibility it might be said that the former had no right to complain, or at least had waived that right; but it is manifest that neither of the immediate parties to the fine can, either by an agreement among themselves or by waiver, justify the invasion of the right of a third party, if any he has, to object to it.

What is the complaint of the plaintiff? It is a corporation engaged in the construction of buildings and employing a number of men. Its men left its employ on a strike. To keep them away the defendants threatened with fines such as were members of the unions, and by that means kept them away from the plaintiff when otherwise they would have stayed, — all to the great damage of the plaintiff. Shortly stated the case is this: The plaintiff's men are being coerced by threats of a fine to leave its employ, greatly to its injury, the fines to be levied in accordance with the by-laws of a voluntary association of which the proposed victims are members. This injury to the plaintiff is intended by the defendants. Has the plaintiff any standing in equity to an injunction against the infliction of such injury?

It is to be premised that the right which the plaintiff seeks to have protected

against the acts of the defendants arises from no contract or statute, but out of the nature of things. It is one of the large body of rights which have their foundation in the fitting necessities of civilized society. It is the common law right to a reasonably free labor market. Vice Chancellor Stevenson, in speaking of it, says it has been called a "probable expectancy," and describes it as "the right which every man has to earn his living or pursue his trade without undue interference." *Jersey City Printing Co.* v. *Cassidy*, 18 Dick. 759, 765. He further remarks (pp. 765, 766): "It will probably be found . . . that the natural expectancy of employers in relation to the labor market and the natural expectancy of merchants in respect to the merchandise market must be recognized to the same extent by courts of law and courts of equity and protected by substantially the same rules. It is freedom in the market, freedom in the purchase and sale of all things, including both goods and labor, that our modern law is endeavoring to insure to every dealer on either side of the market." And in *Atkins* v. *Fletcher Co.*, 20 Dick. 658, 664, the same judge says: "The elemental right of the employer of labor which the courts recognize to-day no doubt is the right to employ, while the corresponding right of the workman is the right to be employed. In other words, the right to buy labor and the right to sell labor are recognized by the law, and their enjoyment is greatly impaired or destroyed unless freedom in the labor market — freedom on both sides of the labor market — is maintained. Each party to a contract for the sale of labor has an interest in the freedom of the other party with respect to making the contract." In the words of Lord Lindley in *Quinn* v. *Leathem* [1901], A. C. 495, 534, "A person's liberty or right to deal with others is nugatory unless they are at liberty to deal with him if they choose to do so." This right of the employer is conclusively established by the numerous cases which hold that he may maintain an action against those who by intimidation prevent persons from entering into his employ. See remarks of Lord Halsbury in *Allen* v. *Flood* [1898], A. C. 1, 71, 72. In our own reports such a case may be found in *Vegelahn* v. *Guntner*, 167 Mass. 92. This is the right — the right to a free labor market — which the plaintiff asserts has been invaded by the defendants, and for which he seeks protection.

The defendants also have rights. They have the right to work or not to work, to sell their labor upon such terms as they see fit and to combine for the purpose of getting more pay or a shorter day. And for the purpose of strengthening their organization and making it more effective they have the right to make appropriate by-laws for its internal management, and for the regulation of the conduct of its members toward each other in matters affecting the general interests of the body; and they may enforce obedience to such by-laws and regulations by fines or other suitable penalties.

But not much progress is made by this general statement of the rights of the respective parties. We are still only on the skirmish line. In the jurisprudence of any civilized country there are but few, if any, absolute rights, — rights which bend to nothing and to which everything else must bend. The right to one's life would seem to be quite absolute, but it must yield to the private right of self-defense and to the public right to punish for crime. And so in the case before us, neither the right of the plaintiff to a free labor market nor the right of the union to impose a fine upon its members is absolute. Neither is to be considered apart from the other, or without reference to any other conflicting right, whether public or private; but each must be regarded as having in the rules of human conduct its own place beyond the limits of

which it must not go. Moreover it must be borne in mind (what sometimes seems to be forgotten by the actors upon each side of such controversies) that the controversy is not a warfare in the sense that for the time being the usual rules of conduct are changed, as in the case of an actual war between two countries. There is no martial law in these cases, no change in the ordinary rules of society, but these rules remain the same as before, commanding what was theretofore right and prohibiting what was theretofore wrong.

The right of an employer to free labor is subject to the right of the laborer to hamper him by many expedients short of fraud or intimidation amounting to injury to the person or property of those who desire to enter his employ, or threats of such injury. For instance, persuasion not amounting to such intimidation is lawful, and perhaps the same may be said of social pressure even when carried to the extent of social ostracism, not including however any threat in a business point of view. See *Vegelahn* v. *Guntner*, 167 Mass. 92; *Jersey City Printing Co.* v. *Cassidy*, 18 Dick. 759, 769; 20 Harvard Law Review, 267. Social rights and privileges must take care of themselves. The law cannot prescribe with whom one shall shake hands or associate as a friend.

So long also as the by-laws of a union relate to matters in which no one is interested except the association and its members, and violate no right of a third party or no rule of public policy, they are valid. Fines may be imposed, for instance, for tardiness, absence, failure to pay dues, or for misconduct affecting the organization or any of its members; and for numerous other acts. It cannot be successfully contended, however, that as against the right of some party other than the association and its members an act, otherwise a violation of the third party's rights, is any less a violation because done by some member in obedience to a by-law. If a member commits an assault upon a person, and is called into court by the Commonwealth upon a criminal complaint, or in a civil action by the victim, he can find no valid ground of defense in the fact that he committed the assault in compliance with the requirements of a contract with some other person, or in obedience to a by-law of an association of which he was a member. So a by-law providing that, upon an order to strike, every employee shall quit work even although such an act should be in violation of a contract then existing between him and his employer for continuous service, and that for failure thus to break his contract the member should be fined, doubtless would be declared invalid. And the principle at the bottom of such a decision is this, namely: An interference with the right of a third party cannot be justified upon the ground that the intruder is acting in accordance with an agreement between him and some other person. In a word, so long as a fine is imposed for the guidance of members in matters in which outside parties have no interest, or in which there is no violation of a right of an outside party, then no such party can complain. But when the right of such a party is invaded, it is no defense, either to the person fined or to those who have imposed the fine, that the invasive act was done in accordance with the by-laws of an association.

In the case before us, standing opposed to each other, are these two rights: the right of the employer to a free labor market, and the right of the striking employees in their strife with him to impair that freedom; and the crucial question is, how far can the latter go? On which side of the line shall stand the matter of coercion by

fines imposed by a union upon its members to impair that freedom? Is the employer's right to a free market subject to this system of mutual intimidation and coercion by fines, or is the right to establish such a system subject to the right of the employer to a free market? If the employer's right is not subject to this method of intimidation, then of course as against him it is unlawful. If it is subject to it, then he cannot complain, no matter how severe the blow.

So far as concerns the law in this Commonwealth at least, some things seem to be settled. It is settled that the flow of labor to the employer cannot be obstructed by intimidation or coercion produced by means of injury to person or property, or by threats of such injury. *Vegelahn* v. *Guntner*, 167 Mass. 92. In that case ALLEN, J., said: "Such an act [picketing as a means of intimidation] is an unlawful interference with the rights both of employer and of employed. An employer has a right to engage all persons who are willing to work for him at such prices as may be mutually agreed upon; and persons employed or seeking employment have a corresponding right to enter into or remain in the employment of any person or corporation willing to employ them. These rights are secured by the Constitution itself. *Commonwealth* v. *Perry*, 155 Mass. 117. *People* v. *Gillson*, 109 N. Y. 389. *Braceville Coal Co.* v. *People*, 147 Ill. 66, 71. *Ritchie* v. *People*, 155 Ill. 98. *Low* v. *Rees Printing Co.*, 41 Neb. 127." See also *Sherry* v. *Perkins*, 147 Mass. 212. And it is unnecessary to cite cases in support of the proposition that such is the great weight of authority elsewhere, even though the ultimate object of the strike be legal.

There can be no doubt that fining is one method of injuring a man in his estate, and that a threat to fine is a threat of such an injury. Indeed this is recognized by the decree made by the trial court in this very case, so far as it affects Reagan, one of the defendants, who it was found had threatened with a fine a man once but not then a member of a union.

It is urged however that although this method of intimidation is generally an invasion of the employer's right to a free market and therefore illegal, yet when the intimidation is exerted by a union upon its members in accordance with its by-laws in a strike whose object is legal, it is justifiable and legal. To this the obvious reply is that the rule of freedom to contract is founded upon principles of public policy, that each party to a contract is interested in the freedom of the other party, that it can make no difference to the public or to the employer (who in the present case is the other party), that the person intimidated is or is not a member of the society intimidating. In either case the injury is the same and is from the same cause, namely, intimidation. The workman is no longer free. In *Longshore Printing Co.* v. *Howell*, 26 Ore. 527, the court, after speaking of the general right of labor unions to make rules, proceeds thus: "It must be understood, however, that these associations, like other voluntary societies, must depend for their membership upon the free and untrammelled choice of each individual member. No resort can be had to compulsory methods of any kind to increase or keep up or maintain such membership. Nor is it permissible for associations of this kind to enforce the observance of their laws, rules and regulations through violence, threats or intimidation, or to employ any methods that would induce intimidation or deprive persons of perfect freedom of action."

The keynote on this matter is struck in *Booth* v. *Burgess*, 65 Atl. Rep. 226, 233,

in the following language: "No surrender of liberty or voluntary agreement to abide by by-laws on the part of the employees who are first coerced, made by them when they enter their labor unions, can . . . affect the right of the complainant to a free market, which right he will enjoy for all it may be worth if these employees are permitted to exercise their liberty. The employees may be able to surrender their own right, but they certainly cannot surrender the rights of other parties," citing *Boutwell* v. *Marr*, 71 Vt. 1, and *Berry* v. *Donovan*, 188 Mass. 353. And in *Downes* v. *Bennett*, 63 Kans. 653, 662, there is a recognition of the same doctrine: "This is not the case of a union or association of persons intimidating its members from engaging in a specific service offered by an employer, and standing ready and open to be entered. In such cases, on a showing of continuous damage caused by inability to secure employees, preventive relief has been afforded." *Boutwell* v. *Marr*, 71 Vt. 1.

An opposite doctrine leads to strange conclusions. For instance, if ten men banded together undertake by coercion to keep two other men from entering an employment, and they do this in order to force the employer, for lack of ability to get the two, to employ them (the ten), the employer's right to a free market is invaded, and if he suffers thereby he may proceed either in equity or law against the ten; but if the ten men first induce the two other men to enroll themselves in the same organization with the ten, then, it is said, the ten men may by fines or threats of fines so intimidate the two men as to frighten them from the employer; and that such intimidation is no violation of the employer's right. A rule of law which leads to such inconsistencies is not to be adopted. It does not distinguish between coercion and non-coercion, but between organized coercion and sporadic coercion. It makes a distinction entirely foreign and immaterial to the ground upon which the right to a free market is based.

If it be said that fines are not in themselves illegal, and that consequently their use cannot be illegal, the answer is that when they are used as a method of coercion and create a kind of coercion inconsistent with the right of a person they are, as against that person's right, illegal. If it be said, as we have heard it said, that fines are innocent and cannot be illegal because they are used by all governments as a method of punishing criminals, the answer is that if the principle is true that, what a government may do to punish for crime, individuals or societies may do to enforce private rights, then it follows that a by-law providing for imprisonment or even death may be legal.

If it be said that the member fined may take his choice either to leave the organization or abide by its rules to which he has before assented, and that where there is a choice there can be no coercion, the answer is that in almost every conceivable case of coercion short of an actual overpowering of the physical forces of the victim there is a choice. The highwayman, who presents his cocked pistol to the traveller and demands his purse under pain of instant death in case of refusal, offers his victim a choice. He may either give up his purse and live, or refuse and die. In *Carew* v. *Rutherford*, 106 Mass. 1, the victim had a choice either to pay a fine or take the consequences of a refusal. And so the member of a labor union has the choice either to pay the fine or leave the union. Is it difficult to realize what that choice is in these days of organized labor? Is it too much to say that many times it is very difficult, indeed practically impossible, for a workman to get bread for himself and his family

by working at his trade unless he is a member of a union. It is true he has a choice between paying his fine and not paying it, but is it not frequently a hard one? May not the coercion upon him sometimes be most severe and effective? Such is not a free choice. And a market filled with such men is not a reasonably free market. In this connection the language of *Boutwell* v. *Marr*, 71 Vt. 1, seems significant and appropriate: "The law cannot be compelled by any initial agreement of an associate member to treat him as one having no choice but that of the majority, nor as a willing participant in whatever action may be taken. The voluntary acceptance of by-laws providing for the imposition of coercive fines does not make them legal and collectible. . . . The fact that the relations and processes deemed essential to a recovery are brought within the membership and proceedings of an organized body cannot change the result. The law sees in the member of an association of this character both the authors of its coercive system and the victims of its unlawful pressure. If this were not so, men could deprive their fellows of established rights, and evade the duty of compensation simply by working through an association."

If it be said that without fines the same result may be indirectly reached by the organization by exercising two rights, namely, the right to expel a member and the right to charge an initiation fee upon his return, and since the same result may thus be legitimately reached, nobody is harmed if it be reached by fine, the reply is that if the purpose of expulsion and the subsequent initiation fee be each a part of one and the same transaction, namely, the imposition of a fine, and the two acts are in substance the procedure by which the intimidation by fine is exercised, and such is the intention, then there may be a strong reason for holding that such a procedure is one imposing a fine and should be treated as such. Ordinarily, however, each separate act should be treated by itself and its validity judged by itself. The fact that separately and independently executed they incidentally may have the effect of a fine is immaterial on the question of the right to fine. The fact that a result may be incidentally reached in one way does not show that the same result may be lawfully reached in another way.

In considering this question we cannot lose sight of the great power of organization. It should be taken into account when one is considering where the line should be drawn between the right of the employer to a free market and the right of workmen to interfere with that market by coercion through the rules of a labor union. It is not universally true that what one man may do any number of men by concerted action may do. In *Pickett* v. *Walsh*, 192 Mass. 572, LORING, J., after alluding to the great increase of power by combination, says: "The result of this greater power of coercion on the part of a combination of individuals is that what is lawful for an individual is not the test of what is lawful for a combination of individuals; or to state it in another way, there are things which it is lawful for an individual to do which it is not lawful for a combination of individuals to do."

This organization of labor to better the condition of the laborer is natural and proper. There can be no doubt that it is the most effective way, perhaps the only effective way, in which as against the organization of capital the rights of the laborer can be adequately protected. In many ways the labor unions have succeeded in bettering the condition of the laborer; and so far as their ultimate intentions and the means used in accomplishing them are legal they are entitled to protection to the extreme limit of the law.

But their powers must not be so far extended as to encroach upon the rights of others. It is clear that if the power to intimidate by fine be regarded as one of the powers which labor unions may rightfully exercise, then the right to a free market for labor, — nay, even the right of the laborer to be free, — is seriously interfered with, to the injury both of the public and the employer as well as the laborer.

In *Martell* v. *White*, 185 Mass. 255, it was said: "The right of competition rests upon the doctrine that the interests of the great public are best subserved by permitting the general and natural laws of business to have their full and free operation, and that this end is best attained when the trader is allowed in his business to make free use of those laws." So of competition in labor; and so of competition between the employer and employee. The contest between them is only competition on a wide basis. As was said by KNOWLTON, C.J., in *Berry* v. *Donovan*, 188 Mass. 353, 358: "In a broad sense, perhaps the contending forces may be called competitors." If the contest be carried on under the rules which regulate the law of supply and demand, leaving those engaged on either side to act under the general and natural laws of business, free from artificial coercion or intimidation as the words are ordinarily understood in this connection, then neither party has the right to complain; but if coercion or intimidation by threats of a direct personal loss, due not to causes arising out of the situation or logical to the situation, but to a cause having no natural relation to the situation and entirely inconsistent with the basic principle of freedom of action under the natural laws of business, then there is cause for complaint. Such a method of coercion must be declared illegal, as in violation of the right of the public and all concerned to a reasonably free labor market, that is, a market where all may act under this basic principle of freedom.

In view of these considerations and of others more fully set forth in *Martell* v. *White*, which are not here repeated, and in *Boutwell* v. *Marr*, *ubi supra*, a majority of the court are of opinion that the overwhelming sense of the thing is that the principle that the right of the employer is not subject to coercion or intimidation by injury or threats of injury to the persons or property of laborers standing in the market to meet him, should apply to the coercion and intimidation exerted by labor unions upon their members by fines or threats of fines. Any other conclusion is inconsistent with the existence of a reasonably free labor market to which both the employer and the employee are entitled.

Our attention has not been called to any case, nor are we aware of any, in which the precise point here involved has been discussed, which is inconsistent with the conclusion which we have reached. We are not aware of any case in which it has been adjudged that where a third party has a right to insist that those with whom he deals shall be free from coercion the rule does not apply to coercive acts by way of fines or threats of fines, imposed or to be imposed, by a voluntary association upon its members in accordance with its by-laws. The case of *Bowen* v. *Matheson* was explained in *Plant* v. *Woods*, 176 Mass. 492. Neither in that case nor in *Pickett* v. *Walsh* was there any evidence of coercion by fines. And the same may be said of *Mogul Steamship Co.* v. *McGregor*, 15 Q. B. D. 476; 21 Q. B. D. 544; 23 Q. B. D. 598; [1892] A. C. 25. In that case there was simply a withdrawal of trade advantages under certain conditions. The defendants had two prices, — one price for one class of customers, and a different one for another class. There was nothing in the nature of an arbitrary fine. As stated

by FRY, L.J., in the case as reported in 23 Q. B. D. 598, 622, "Competition was in substance the only weapon which the defendants intended to use against their rivals in trade. No thought of using violence, molestation, intimidation, fraud, or misrepresentation was entertained by the defendants." See also in same case the language of COLERIDGE, C.J., 21 Q. B. D. 544, 552; and that of Halsbury, Lord Chancellor [1892], A. C. on p. 36, as follows: "After a most careful study of the evidence in this case, I have been unable to discover any thing done by the members of the associated body of traders other than an offer of reduced freights to persons who would deal exclusively with them;" and that of Lord Watson, on p. 43 of the same volume.

In the preparation of this opinion a large number of cases in addition to those hereinbefore named have been consulted, among which are the following: *Brown* v. *Stoerkel*, 74 Mich. 269; *Flaccus* v. *Smith*, 199 Penn. St. 128; *Fuerst* v. *Musical Mutual Protective Union*, 95 N. Y. Supp. 155; *Burns* v. *Bricklayers' Benevolent & Protective Union*, 14 N. Y. Supp. 361; *Master Stevedores' Association* v. *Walsh*, 2 Daly, C. P. 1; *Froelich* v. *Musicians Mutual Benefit Association*, 93 Mo. App. 383; *Doremus* v. *Hennessy*, 176 Ill. 608; *Bohn Manuf. Co.* v. *Hollis*, 54 Minn. 223; *Temperton* v. *Russell* [1893], 1 Q. B. 715; *Wabash Railroad* v. *Hannahan*, 121 Fed. Rep. 563; *Mayer* v. *Journeymen Stonecutters' Association*, 2 Dick. 519; *Thomas* v. *Cincinnati, New Orleans & Texas Pacific Railway*, 62 Fed. Rep. 803; *Barr* v. *Essex Trades Council*, 8 Dick. 101. See also for others, those cited in *Martell* v. *White*, 185 Mass. 255, and in *Pickett* v. *Walsh*, 192 Mass. 572.

The result is that in the opinion of a majority of the court there should be a decree restraining and enjoining the defendants, their agents and servants, from intimidating by the imposition of a fine, or by a threat of such fine, any person or persons from entering into the employ of the plaintiff or remaining therein; or from in any way being a party or privy to the imposition of any fine or threat of such imposition upon any person desiring to enter into or remain in the employ of the plaintiff; and it is

So ordered.

SHELDON, J. [*dissenting*]. The Chief Justice and I are unable to assent to the conclusion reached by the majority of the court. We cannot convince ourselves that under such circumstances as are here presented the defendants should be enjoined from imposing or threatening to impose fines upon those members of their organization who, by continuing to work for the plaintiff, had, under the rules to which they had themselves assented, become liable to such imposition. The question is one of great practical importance; it has been said that the law upon the subjects involved is not yet fully settled; and we think it proper to state the views which seem to us to be correct.

We assume that any defendants who have instituted or are carrying on an unjustifiable strike, or who for the prosecution and maintenance of a justifiable strike are inducing workmen either to leave or to refrain from entering the employ of the plaintiff, by the use of means which are either unlawful in themselves or would operate as an interference with a superior right of the plaintiff, — who, that is, have combined either to secure an unlawful end or to secure a lawful end by the use of unlawful means, — may be restrained by injunction, at any rate from such specific wrongful acts in furtherance even of a lawful strike as are unjustifiable towards the plaintiff and are likely to cause such injury to the plaintiff as to warrant equity in

interfering. It would not be material in such a case that there was no continuing contract of employment between the plaintiff and the servants who were thus induced to leave him, or that the employer was complaining of the action of the labor union in seeking merely to enforce its rules upon its own members, although no question arose between the union itself and workmen who desired to continue in their employment but who were coerced by the fear of fines or of other consequences that might follow their infraction of the rules of the union. See as to this general doctrine *Martell* v. *White*, 185 Mass. 255; *Vegelahn* v. *Guntner*, 167 Mass. 92; *Perkins* v. *Pendleton*, 90 Maine 166; *Boutwell* v. *Marr*, 71 Vt. 1; *Frank* v. *Herold*, 18 Dick. 443; *Booth* v. *Burgess*, 65 Atl. Rep. 226; *Spaulding* v. *Evenson*, 149 Fed. Rep. 913; *Temperton* v. *Russell*, [1893] 1 Q. B. 715. Nor is it doubted that the promoters of a strike would have no right to persuade a laborer to violate any existing contract of employment with the plaintiff. *Beekman* v. *Marsters*, 195 Mass. 205, 210, and cases cited. *Reynolds* v. *Davis*, 198 Mass. 294. Nor would they have a right, by the threat of a fine or of any similar disciplinary measure, to prevent any one who was not a member of their union from working for the plaintiff. *Read* v. *Friendly Society*, [1902] 2 K. B. 88. *Haskins* v. *Royster*, 76 N. C. 601. *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Railway*, 151 U. S. 1. *Employing Printers' Club* v. *Doctor Blosser Co.* 122 Ga. 509. *South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905] A. C. 239. This is the fundamental doctrine of *Carew* v. *Rutherford*, 106 Mass. 1.

But the defendants' associations were lawful ones. The language of KNOWLTON, C.J., in *Reynolds* v. *Davis*, 198 Mass. 294, 302, states as to this point a universally recognized doctrine. No court would assert that the organization of a labor union constituted in itself an unlawful conspiracy. The objects aimed at by these unions were proper ones. Their main object, as stated in the constitution of one of them, the Bricklayers' Benevolent and Protective Union, is, "to unite all practical journeymen bricklayers working within the jurisdiction of this union, so that by concerted action their interests will be protected and their condition improved, and to render assistance to injured members, and also provide a proper burial for deceased members." The right of the defendants to form such combinations or unions for the purpose of protecting their interests and improving their condition by securing higher wages and shorter periods of labor, even in competition with other laborers, is undisputed. *Pickett* v. *Walsh*, 192 Mass. 572, 580. *Snow* v. *Wheeler*, 113 Mass. 179. *Carew* v. *Rutherford*, 106 Mass. 1, 10. *Commonwealth* v. *Hunt*, 4 Met. 111, 129.

Nor is there now any question that the defendants had the right through concerted action to attempt to secure the attainment of these lawful objects by means of a strike. If the end aimed at is lawful, the strike is lawful, and is not made unlawful by the fact that it is ordered and carried on by the action and through the instrumentality of a labor union. This is the express point of the decision in *Reynolds* v. *Davis*, 198 Mass. 294, a decision which was made only some months ago, and which as to this point was concurred in by every member of the court, the only dissent being as to the lawfulness of the purpose of the strike which was there considered. This means and must mean that the members of a labor union who have engaged in a strike for a lawful purpose have a right to carry it on and to seek to make it effectual by the use of any means which are neither unlawful in themselves nor inconsistent with the exercise by others of any equal or superior rights.

It is conceded in this case that the defendants' strike was a lawful one, because it must be treated as instituted and carried on for the lawful purposes of obtaining higher wages and shorter periods of labor. We adopt as to this question what is said in the majority opinion. It follows accordingly that the defendants had a right not only to carry on their strike but to seek to make it successful by the use of whatever rightful means were available to them. And this seems to us to be the general doctrine of the cases. It has been upheld, either in terms or by necessary inference, in *Reynolds*, v. *Everett*, 144 N. Y. 189; *Mills* v. *United States Printing Co.* 99 App. Div. (N. Y.) 605; *Rogers* v. *Evarts*, 17 N. Y. Supp. 264; *Downes* v. *Bennett*, 63 Kans. 653; *Longshore Printing Co.* v. *Howell*, 26 Ore. 527; *Gray* v. *Building Trades Council*, 91 Minn. 171. Indeed this proposition, as we understand, is not disputed by the majority; nor has it been denied by any authoritative judicial decision.

The plaintiff in the case before us has indeed, like every other employer of labor, a right to enjoy a free labor market, to have a free flow of labor come to him, — that is, he has a right to employ such men as are willing to work for him upon such terms as may be mutually agreed upon between him and them. The strongest statements of this right may perhaps be found in some of the cases cited in the majority opinion. *Brennan* v. *Hatters of North America*, 44 Vroom, 729. *Jersey City Printing Co.* v. *Cassidy*, 18 Dick. 759, 765. *Atkins* v. *Fletcher Co.* 20 Dick. 658, 664. *Quinn* v. *Leathem*, [1901] A. C. 495, 534. But even these decisions follow the now universal current of authority in recognizing the right of the defendants to curtail and restrict this right of the plaintiff, by combining in labor unions to engage in a lawful strike for the improvement of their own conditions, and in endeavoring to render their strike successful by using all rightful means both to secure unanimity of action among their own members and to dissuade other laborers from entering the employ of the plaintiff. That is, the relative right of the plaintiff to enjoy a free labor market is modified and limited by the right of its employees to enter into an agreement or combination to secure higher wages or to improve otherwise the conditions of their employment, and for this purpose to engage in a strike and to use all rightful means to insure the success of their strike by checking, and if they can do so without resorting to wrongful means, by wholly stopping, the free flow of labor to the plaintiff. But if this be so, manifestly the plaintiff's right to a free labor market is not only not a paramount right, but it is and must be subject to the higher right of the defendants to combine and to carry on a strike by the use of whatever lawful means may be in their power; and we cannot see how this right can be further limited than by restricting it to acts which are not forbidden by law, either as being unlawful in themselves or at variance with a sound public policy. Accordingly, the question now to be decided is whether we can say that the members of a labor union have no right, acting in conformity with rules previously established, to impose a fine upon one of their own members if he goes to work or continues to work for an employer against whom a justifiable strike has been declared in accordance with those rules, where there is no contractual right or duty on either side for the performance of such work.

If we are right in what thus far has been said, the answer to this question must depend upon whether the imposition of such a fine is either forbidden by some rule of law or is found to be inconsistent with some principle of public policy. But in our opinion neither of these affirmations can be made.

L. D. Willcutt & Sons Co. *v.* Driscoll.

The right of all voluntary associations, whether formed for the carrying on of business or for purely social purposes, to establish appropriate by-laws and regulations, not only for their own internal management but also to regulate the conduct of their members towards each other and in matters affecting the general interests of the body, is conceded. And the right to enforce obedience to such by-laws and regulations by suitable penalties is generally recognized. See, besides many other cases that might be cited, *Rex* v. *Westwood*, 7 Bing. 1, 90; 2 Dow & C. 21; *Goulding* v. *Standish*, 182 Mass. 401; *McFadden* v. *Murphy*, 149 Mass. 341; *Smith* v. *Nelson*, 18 Vt. 511; *Mayer* v. *Journeymen Stonecutters' Association*, 2 Dick. 519; *Brown* v. *Stoerkel*, 74 Mich. 269; *Wabash Railroad* v. *Hannahan*, 121 Fed. Rep. 563; *Martin* v. *Nashville Building Association*, 2 Coldw. 418. That provisions for fines to be imposed for conduct injurious to the members of such voluntary associations are not necessarily bad either as between the members themselves or as affecting the conduct of members towards third persons was assumed in *Bowen* v. *Matheson*, 14 Allen, 499. See p. 501. And although the manifest effect of the fine provided for in that case was to put at least a certain measure of coercion upon the individual members of the association to persist in conduct which had been found to be ruinous to the plaintiff's business, the decision was restated and approved in *Plant* v. *Woods*, 176 Mass. 492, 500. The same may be said of other cases cited in that opinion. The suggestions as to the decision in *Bowen* v. *Matheson*, made in *Martell* v. *White*, 185 Mass. 255, and in the majority opinion in the case at bar, really go no farther than to say that such a fine is not necessarily unlawful; but that is exactly what is here contended for.

We cannot make the law to be enforced against labor unions in this respect more stringent than that which is applicable to other organizations established for proper purposes. Such unions are voluntary associations. They are formed for proper purposes. Their objects are not only lawful, but commendable. Like some other associations, the very purpose for which they are created makes it highly important that their members should be held together by the strongest possible bonds, so as to work with absolute unanimity, especially in the time of a trade dispute or strike. Pledges and promises binding all the members are desirable. Voluntary agreements to abide in such matters by the will of a majority of the members under a coercive pecuniary influence, or even under pain of expulsion, cannot be objectionable. Indeed, the right of labor unions to enforce, under penalty of fine or expulsion, compliance by all their members with rules and regulations which have been adopted because deemed by a sufficient majority to be for the common good and which are not in themselves inappropriate or unlawful, is necessary to their continued existence. It is to the united action of all their members that such organizations owe their strength and their ability to accomplish the results at which they aim. Doubtless persons who do not agree in the desirability of those results or in the wisdom or efficiency of the means adopted to secure them, cannot be required to continue as members against their will, any more than they could have been compelled to become members in the first instance. It is of the very essence of a voluntary organization that membership in it is and must continue to be itself voluntary; and this must be so on both sides as long as property rights do not come in question. *Plant* v. *Woods*, 176 Mass. 492, 502. *Flacus* v. *Smith*, 199 Penn. St. 128. *Longshore Printing Co.* v. *Howell*,

26 Ore. 527. So long, however, as such membership continues and the organization still serves the purpose for which it was created, "the will of the individual must," as was said by the court in *Wabash Railroad* v. *Hannahan*, 121 Fed. Rep. 563, "consent to yield to the will of the majority, or no organization whether of society into government, capital into combination, or labor into coalition, can ever be effectual. The individual must yield in order that the many may receive a greater benefit. The right of labor to organize for lawful purposes and by organic agreement to subject the individual members to rules, regulations and conduct prescribed by the majority, is no longer an open question in the jurisprudence of this country." So TAFT, J., in *Thomas* v. *Cincinnati, New Orleans & Pacific Railway*, 62 Fed. Rep. 803, 817, after conceding the right of the employees of a receiver to organize themselves into a labor union which shall take joint action as to their terms of employment, and to elect officers to represent them, says: "The officers they appoint, . . . if they choose to repose such authority in any one, may order them, on pain of expulsion from their union, peaceably to leave the employ of their employer, because any of the terms of their employment are unsatisfactory." In *Mayer* v. *Journeymen Stonecutters' Association*, 2 Dick. 519, it appeared that members of the defendant association were practically compelled to acquiesce in the decision of the majority and to join in strikes or abstain from working for particular employers by forfeiture of membership consequent upon being declared "scabs"; and this was not interfered with by the court, no other coercion or actual violence having been used. The same rule was applied in *Brown* v. *Stoerkel*, 74 Mich. 269, to persons suspended from a labor union for not joining in a strike. The validity of such rules as are here in question and of penalties to be imposed under them after due notice and hearing in conformity to the rules was either declared or recognized and assumed in *Pickett* v. *Walsh*, 192 Mass. 572, 575; *Fuerst* v. *Musical Mutual Protective Union*, 95 N. Y. Supp. 155; *Burns* v. *Bricklayers' Benevolent & Protective Union*, 14 N. Y. Supp. 361; *Master Stevedores' Association* v. *Walsh*, 2 Daly, C. P. 1; *Froelich* v. *Musicians Mutual Benefit Association*, 93 Mo. App. 383; and *Moores* v. *Bricklayers' Union*, 23 Weekly Law Bulletin (Ohio) 48. In *Quinn* v. *Leathem*, [1901] A. C. 495, the fines imposed were not treated as in themselves objectionable, but the decision was put upon the ground that the defendants had acted, not for any purpose of advancing their own interests as workingmen, but for the sole purpose of injuring the plaintiff in his trade. See language of Lord Stroud, p. 514. So in *Brennan* v. *United Hatters*, 44 Vroom, 729, it was assumed that the imposition of fines, even up to the amount of $500, might be lawful; but the case turned upon the fact that the plaintiff had not had such notice and trial as were guaranteed to him by the rules of the union. In *Booth* v. *Burgess*, 65 Atl. Rep. 226, the object of the fines was to enforce a strike which was merely sympathetic or in the nature of a boycott, such as was held to be unjustifiable in *Pickett* v. *Walsh*, 192 Mass. 572. In *Purvis* v. *United Brotherhood*, 214 Penn. St. 348, a strong decision against the coercion of an employer by sympathetic strikes against his customers, it was assumed throughout the opinion that the officers of the labor union would not have been prevented from enforcing by peaceful means upon their own members the rules of the union forbidding its members to work upon non-union material; and this would include the right to impose the penalties established by those rules. In *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598,

affirmed on appeal in [1892] A. C. 25, it appeared that conformity to the rules of the association was enforced by a penalty of dismissal, a severer and more drastic remedy than a mere pecuniary penalty, which practically could usually be enforced only by expulsion, and this fact was relied upon by the plaintiff upon the appeal (p. 30); but both Lord Watson and Lord Morris declined to treat this threat of expulsion as involving any wrongful intimidation (pp. 43, 49, 50). Indeed, we do not understand it to be denied that those members of the unions who declined to join in the strike which was ordered were liable to expulsion by the unions acting in good faith; and as it appears that the defendants are pecuniarily irresponsible, payment of the fines threatened could have been enforced only by expulsion. And the member of a union upon whom such a fine has been lawfully imposed in accordance with by-laws to which he has himself previously assented, is in no respect in the predicament of a highwayman's victim who has the bare option of parting with his money to save his life or of losing his life without thereby saving his money. The situation of one who finds himself compelled to choose between two alternatives, however distasteful, which he has brought upon himself and neither of which is unlawful, is in no way comparable to that of one who is compelled by wrongful force to elect between submitting to one of two alternative injuries, both of which are unlawful. An argument which rests upon such a comparison is without foundation.

Nor can we say that the imposition of fines, not in themselves unlawful and not injurious to the plaintiff except as they restrict an inferior right by the lawful exercise of a higher right, is to be regarded as contrary to a sound public policy. Gloomy vaticinations of injurious results to be apprehended from the excessive power which labor unions may acquire by their combination of many individuals into one body do not greatly impress us. The power of capital hitherto has not been found insufficient to prevent other than proper advantages from being gained by the representatives of labor, nor does it seem to us likely to be insufficient in the future. If it shall appear that there is such a danger, yet we cannot alter the law by denying to labor unions the rights and powers which the law gives to all lawful associations.

The law does not do so vain a thing as to allow the formation of labor unions and to declare their right to initiate and by lawful means to carry on a justifiable strike, and then refuse them the use of the only practical means by which their acknowledged rights can be secured. And see, beside the cases already cited, *Cote* v. *Murphy*, 159 Penn. St. 420, 430; *Bohn Manuf. Co.* v. *Hollis*, 54 Minn. 223; *Macauley Brothers* v. *Tierney*, 19 R. I. 255. The books are full of cases recognizing the right of labor unions to enforce their rules upon their members in a reasonable way. There are but few cases that discuss by-laws authorizing the imposition of fines for a violation of rules; for their validity is almost universally conceded. It is believed that most of the many thousand labor unions in this country and Great Britain have such a rule or by-law, under which they are acting to-day without complaint from any one. In such action they are in our judgment simply adopting a principle which is of general application for similar purposes.

It is true of course that no man lawfully can be compelled at the mere dictation of other men to abstain from working for such prices and during such periods of labor as he may be willing to accept; but it is no less true that when one chooses voluntarily to unite with others of the same craft in forming an organization for the purpose of

bringing about by the united action of all its members more favorable conditions of employment, he is bound, so long as he desires to remain a member of that organization, to submit within certain limits his own freedom alike of judgment and of action to the judgment of his associates, and to conform his conduct to that standard which they shall have agreed to be for the best interest of all and of each. Unity of action would be impossible upon any other terms. Accordingly, all the members of such a body have a right to expect, and by reasonable rules and appropriate penalties to provide for, the observance of such terms. Those who desire to employ the members of such organizations must expect this to be the case, and have no right to complain of the requirements of such rules, and of their reasonable enforcement upon each other by the members of such organizations. To this extent, the employer's relative right to a free labor market must yield to the higher right of the laborers to combine and to act in unison for the purpose of obtaining better terms from their employer. In other words, the general right of an employer to go into the market to hire laborers does not deprive a union, in carrying on a lawful strike, of the right to use upon its individual members, for the purpose of keeping them up to the performance of their duty as such members, all the influences that any other organization properly could use, including the imposition of fines. The right to use such influences is an independent and paramount right. The interests of the employer are subordinate to this right, and must yield to it.

Doubtless this power of discipline by fines or by the ultimate penalty of expulsion cannot properly be resorted to for the purpose of requiring conduct intrinsically unlawful, or for the purpose of compelling a minority member to join in action the ultimate object of which is to damage a third person. *Ertz* v. *Produce Exchange Co.* 82 Minn. 173. Just as the rules of an association cannot protect its members who have done actionable injury to a third person, so a plaintiff who has suffered injury by the enforcement of its rules and penalties upon its own members for a wrongful purpose may properly be allowed a remedy. *Carew* v. *Rutherford*, 106 Mass. 1, 10. If a strike should be declared for an unlawful object, it would be illegal because of its object; and all the members trying to maintain it by direct or indirect action against the employer might be liable in damages and subject to injunction. They would be so liable just as much without a by-law authorizing the imposition of fines as with one. Any labor organization acting against an employer to prevent him from carrying on his business is acting unlawfully if its action is without legal justification. The case of *Boutwell* v. *Marr*, 71 Vt. 1, might well have been put upon this ground; and in our opinion our own case of *Martell* v. *White*, 185 Mass. 255, should have been rested upon a similar doctrine. But if the object of a strike is legal and commendable, an effort to keep the members together by the imposition of fines, if need be, under a by-law previously adopted, is also legal and commendable.

The only cases that we have found which in principle are contrary to our conclusions are *Boutwell* v. *Marr*, 71 Vt. 1, the reasoning of which we regard as ill-considered and erroneous, and *Martell* v. *White*, 185 Mass. 255, in which a majority of this court followed the Vermont decision. But in *Martell* v. *White* it was assumed (p. 262) that the fine was "so large as to amount to moral intimidation or coercion," and was "used as a means to enforce a right not absolute in its nature but conditional," and was "inconsistent with the conditions upon which the right" rested. None of these con-

ditions are applicable here. The findings made in this case went no further than that some coercion was exercised upon the striking members of the unions by their apprehension of fines. We have seen that the fines which were threatened were not in themselves unlawful, were in accordance with the by-laws of the unions of which the strikers were members, and were imposed in conformity with a right which was paramount to any inconsistent right of the plaintiff. We do not consider that the point actually decided in *Martell* v. *White* was necessarily inconsistent with the view here taken. So far, however, as the general doctrine of that case is applicable to fines imposed for a violation of rules lawful in themselves and not sought to be enforced for a purpose either strictly unlawful or opposed to public policy or inconsistent with the general welfare of the community, we are not willing to follow it. We do not think that the court can distinguish between the coercive effect of larger and smaller fines, or say as matter of law that they do, by reason merely of their magnitude, amount to moral intimidation. All fines are necessarily coercive in their operation, if they have any effect whatever. The statement that they may simply call the attention of a member of an organization to the fact of the infringement of some innocent regulation, or serve as an extra incentive to the performance of some absolute duty, we understand to be, and to have been manifestly intended to be, a concession that the degree of coercion which they exert in some instances may be a proper one. Perhaps unreasonable or excessive fines sometimes might be found to amount to intimidation; but we think it better to say that such fines as are here in question, not found to be excessive in amount, are not to be declared to be unreasonable or unlawful where they are imposed under rules or by-laws which are themselves proper and reasonable, are imposed for justifiable purposes, and are well adapted to serve useful ends for a paramount interest of the parties whose conduct they are to guide, and do not interfere with any absolute or superior right of a third person, or work an injury to his relative rights disproportionate to the good aimed at and reasonably expected to come by reason of them to the members of the association. *Downs* v. *Bennett*, 63 Kans. 653.

To repeat what has already been said in substance, what seems to us the fallacy of the majority opinion is its failure to act upon the fact that the strike in this case was upon justifiable grounds, and of course was lawful. It follows that the action of each member of the union in trying to maintain the strike, without force, or wrongful coercion or intimidation exercised upon any one, was justifiable and lawful. It was not an interference with the rights of the plaintiff, because, as we have seen, the right of an employer to conduct his business without interference in the labor market is subordinate to the right of his employees to strike and to maintain the strike in a lawful manner. As against this right of the employees the employer has no right to have their labor flow to him uninfluenced or undiverted.

Accordingly, we are of opinion that the decree of the Superior Court should be affirmed.

Loring, J. For the reasons stated in the opinion of Mr. Justice Sheldon I should agree with the conclusions there reached were it not for the recent decision made by this court in *Martell* v. *White*, 185 Mass. 255.

The agreement in *Martell* v. *White*, was not an agreement or combination of laborers to better their condition, but an agreement between certain manufacturers, quarriers and polishers of granite to buy and sell to and to work for each other to the

exclusion of other granite manufacturers, quarriers and polishers. This court held such an agreement to be a valid one. Whether that agreement was a valid one is not now up for decision. For the purposes of this discussion I take *Martell* v. *White* to be a decision as to what means may be lawfully used to enforce a legal agreement.

In my opinion the decision in *Martell* v. *White* ought not to be overruled in the case at bar although it was wrong, provided laborers and labor unions will not suffer injustice from our standing by it.

The evils which ensue from overruling a wrong decision where no injustice is involved in following it are greater than those which come from standing by it. It would be hard to measure the disastrous consequences to the administration of justice if it were thought that a change in the personnel of the court is to be the occasion for rearguing what has been decided.

The decision in *Martell* v. *White* will not (in my opinion) work injustice to employees and labor unions if it is confined to the point there decided and is not extended to broader propositions.

These broader propositions are as follows: (1) That employees have a right to combine to better their condition and to do all acts (not unlawful) necessary to make the combination an efficient one. (2) That they have a right to strike to gain that end if their demands therefor are not granted by their employer, and to do all acts (not unlawful) necessary to make the strike successful. And (3) that these rights of the employees are superior to the right of the employer to have a free flow of labor in his business.

There is nothing in the decision in *Martell* v. *White*, or in the decision in the case at bar, which calls in question these propositions or any one of them.

All that was decided in *Martell* v. *White* and all that is up for decision in the case at bar is that the imposition of a fine is the use of unlawful means.

It was not decided in *Martell* v. *White* that in case a member of a labor union (which has instituted a strike to get higher wages, for example) goes to work for the employer in question at the old rate, he cannot be expelled.

Neither was it decided in *Martell* v. *White* that since the labor union, in the case put above, can expel such a member, it cannot, if he goes to work for the old rate of pay, threaten to expel him for the purpose of keeping him in the ranks of the labor union, that is to say, in the ranks of the strikers.

Further, it was not decided in *Martell* v. *White* that if a member in the case put above is subject to expulsion because he has deserted the union and gone to work for the lower rate of pay, the union is not at liberty to impose upon him the payment of a sum of money for the common benefit as a condition of his reinstatement. In such a case the union is not bound to expel the deserter. It is at liberty to take him back. On the other hand, since it can expel him and at the same time is at liberty to take him back, it can take him back on such terms as it may choose to impose, including the payment of a sum of money to the union for the common benefit.

And finally, since it may do this it may threaten to do this to keep such a fellow member from going back to work at the old lower rate of pay. There is nothing in *Martell* v. *White* which denies or pretends to deny this right to a labor union.

A payment imposed upon a deserting member of a labor union under the circumstances stated above is not, using words accurately, a fine. The difference is

that a fine is imposed upon a former member for breaking the by-laws while he was a member, and can be collected whether the deserting member returns to the ranks of the union or not, while such a sum as is described above is a condition of the reinstatement of a member who has been expelled or is subject to expulsion, and cannot be collected if the member does not choose to be reinstated.

But although there is a difference between a fine and such a payment as is described above, the difference between the two is of no practical consequence to labor unions. So long as a labor union can impose upon a member who is subject to expulsion the payment of a sum of money as a condition of his reinstatement, the right to impose a fine (giving to that word its accurate meaning) is of no practical consequence. No labor union in the past ever attempted to collect a fine from a member who had left the union and did not seek reinstatement. And no labor union will ever find it worth while to enter on such litigation. The game is not worth the candle. It is because the difference between these two things is not of practical consequence that I think that *Martell* v. *White* should not be overruled. What we are dealing with in the case at bar are the practical rules which govern strikes properly instituted for a proper purpose. If a wrong decision has been made, it had better stand if it does not work injustice. As I have said, if the decision in *Martell* v. *White* is not extended it does not work injustice, and for that reason (in my opinion) it ought not to be overruled in the case at bar.

I am of opinion that the case at bar is covered by the decision in *Martell* v. *White*. Further that the decision in *Martell* v. *White* ought not to be overruled in this case, and that the plaintiff is entitled to the decree stated in the opinion of a majority of the court.

M. Steinert and Sons Company *v.* George F. Tagen *et als.*

Suffolk. December 2, 1910–January 4, 1911.

207 Mass. 394.

Labor Union — Equity Pleading and Practice, Report — *Equity Jurisdiction*, To enjoin wrongful and malicious act — *Evidence*, Presumptions and burden of proof.

In a suit in equity by an employer of labor against officers and members of a labor union, where a material question was whether a certain strike, begun on a May 2, had ended before the following October 14, the judge who heard the case reported to this court his finding of the following facts: The strike was declared May 2. Eleven men left the plaintiff's employ and a few days thereafter the plaintiff secured men to take their places and thereafter continued with a force which was adequate and as large as he desired. Of the eleven who left the plaintiff's employ, eight at once secured new employment in the same city and three left the Commonwealth. A short time after the strike began an international organization, with which the striking union was affiliated and which at first had aided it, ceased to do so. *Held*, that the strike was over on October 14.

Upon the report under R. L. c. 159, § 29, to this court by a judge of the Superior Court of the facts and questions of law arising in a suit in equity, this court may draw such inferences from the facts found in the report as are reasonably to be made from and are not inconsistent with any of the facts reported.

The members of a teamsters' labor union, more than four months after a justifiable strike against an employer of teamsters in a city has ended, cannot lawfully drive about the streets of the city a wagon bearing initials indicating the name of the union and placards stating "The union teamsters are on strike for hours and wages" at such employer's place of business.

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An employer of labor may maintain a suit in equity to enjoin officers and members of a labor union from driving about the streets of a city containing the employer's place of business, more than four months after a strike which had been declared against the employer had ended, wagons bearing initials indicating the name of the union and placards stating, "The union teamsters are on strike for hours and wages" at such employer's place of business, although he is unable to prove the existence of any loss occasioned by such acts, the acts sought to be enjoined being unjustifiable and manifestly intended merely to injure the plaintiff.

BILL IN EQUITY, filed in the Superior Court on October 20, 1910, seeking to enjoin the defendants, officers and members of the "Piano and Furniture Movers and Helpers, No. 343," from certain alleged illegal acts hereinafter more particularly described.

The case was heard in the Superior Court by *Richardson*, J., who reported it to this court for determination. The report contained the following findings:

"The plaintiff is a corporation engaged in the sale and moving of pianos. It has a place of business in Boston on Boylston Street on the corner of Carver Street. The front of the building and salesrooms face on Boylston Street and the side of the building and workshops face on Carver Street. It also has stores in other cities in the Commonwealth.

"All the defendants are members of a certain voluntary association called 'Piano and Furniture Movers and Helpers Union 343' which is a labor union and affiliated with the International Brotherhood of Teamsters and the American Federation of Labor. The defendant Tagen is president of said association, the defendant Smith is treasurer and the defendant Bryson is secretary thereof. The defendant Corliss, though formerly vice-president of said association, is not now an officer thereof, but is still a member.

"The plaintiff employed a number of teamsters for the delivery of pianos to purchasers and for moving pianos belonging to its customers from place to place and all of these teamsters were members of said union. In April, 1910, the union to which the defendants belonged endeavored to secure an increase in wages for the teamsters employed by the plaintiff and shorter hours of labor and failing to do so, on May 2, 1910, declared a strike. The teamsters, eleven in number, at once ceased work. The plaintiff within a few days secured men to take their places and has had since then and has now an adequate force and is not seeking any new men. After a short while the International Brotherhood of Teamsters ceased to aid the strikers any further on account of an alleged failure of the union to comply with the regulations (which were not shown to have been broken) of the Brotherhood in calling the strike and the strikers sought other employment. Of the eleven men who struck eight at once secured positions in Boston as piano movers or teamsters and have continued in such employment and the other three have left the State.

"On October 14, 1910, the defendant Tagen, acting in pursuance of a vote of the union, hired a horse and wagon and attached strips of canvas to the rear and sides of the wagon. The canvas strip on each side of the wagon bore the following inscription in conspicuous letters six inches high:

" 'The union teamsters are on strike for
hours and wages at the following places:
Hunter & Ross, Haymarket Place.
M. Steinert & Sons Co., 162 Boylston St.'

On the rear of the wagon was the following inscription:

" 'I. B. of T.
A. F. of L.'

"The defendant Tagen employed the defendant Kelley to drive this wagon with the above inscriptions through the streets of Boston every day for one week passing in front of the plaintiff's place of business and through Carver Street once each day and twice on one day in sight of the place where the teamsters of the plaintiff when not in actual service congregated and generally throughout the city and the defendant Kelley so drove it. No crowds followed the wagon, or assembled in front of the plaintiff's store, and no attempt other than by the use of this wagon was made by the defendants, or other members of the union or their sympathizers to interfere with the plaintiff or to intimidate its employees. The plaintiff offered no evidence that any of its employees had left its employment or that any person had refrained from patronizing it on account of the display of these signs."

P. Nichols, for the plaintiff.

F. W. Mansfield, for the defendants.

Sheldon, J. The strike of the plaintiff's employees in May was for the purpose of obtaining higher wages and shorter periods of labor. It was a justifiable strike. *L. D. Willcutt & Sons Co.* v. *Driscoll*, 200 Mass. 110, 113, 114, 130. It does not appear to have been carried on in any respect in an unlawful manner or by the use of any unfair coercion or wrongful means. Nor could we say that the particular act charged in the bill to have been done by the defendants would be in itself an unlawful means of publishing the fact that a strike was going on. There was no picketing, no blocking of the streets, no actual interference with the plaintiff or with the men whom it employed in place of the strikers. We see nothing more than an attempt to inform the public, including probable applicants for work with the plaintiff, of the fact of the pending strike. Even if this were before doubtful, we could not now condemn it, in view of the provisions of St. 1910, c. 445, which imposed upon the plaintiff while the strike lasted the duty to give this information to any persons whom it solicited to take the place of the strikers. Of course, what we have said would not be applicable to a case presenting different circumstances from those which existed here, such as appeared for example in *Plant* v. *Woods*, 176 Mass. 492; *Vegelahn* v. *Guntner*, 167 Mass. 92; *Sherry* v. *Perkins*, 147 Mass. 212, and similar cases.

But in the case at bar the strike was over. Although this fact was not expressly found in the Superior Court, in our opinion it is necessarily to be inferred from the facts which are found, and must be taken to be a fact. *Knowles* v. *Knowles*, 205 Mass. 290, 294. The strike was declared May 2, 1910. The plaintiff within a few days secured men to take the places of the strikers, has had ever since an adequate force, and is not seeking any new men. Of the eleven men who left the plaintiff's employ, eight soon secured and still have new employment in the same kind of work as before, and three have left this Commonwealth. Moreover a short time after the strike began, the International Brotherhood of Teamsters, the organization with which the defendants' labor union was affiliated, ceased to aid the strikers any further. It is difficult to imagine a case, short of a formal agreement of both parties, in which it could be more manifest that a strike had come to an end.

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The defendants' act in driving the wagon through the streets with the placards complained of began on October 14, 1910, long after the end of the strike, and has since been continued. We can see no justification of it. It is a false announcement, not adapted in any way to benefit the defendants or their union, but likely to embarrass the plaintiff whenever it may need to employ additional men. It manifestly was intended merely to injure the plaintiff. This shows that it was done maliciously within the legal meaning of that word. *McGurk* v. *Cronenwett*, 199 Mass. 457, 461, 462. The law will give a remedy for such an act. *Martell* v. *White*, 185 Mass. 255, 257. *Hartnett* v. *Plumbers' Supply Association*, 169 Mass. 229.

The case does not come within the doctrine that equity will not enjoin the publication of a libel. There is here a wrongful act maliciously done, continuing and repeated day by day, which, although it is not shown to have caused as yet any damage to the plaintiff, is manifestly intended to produce that result, is liable at any time in the future to do so, and may cause real and substantial damage of which it would be certainly difficult and might be impossible to prove either the existence or the *quantum* of loss. It is like a boycott declared and maintained without cause. In such a case equity will give relief. This is the real doctrine of many of our own decisions. *Sherry* v. *Perkins*, 147 Mass. 212. *Vegelahn* v. *Guntner*, 167 Mass. 92. *Plant* v. *Woods*, 176 Mass. 492. *Pickett* v. *Walsh*, 192 Mass. 572. *Beekman* v. *Marsters*, 195 Mass. 205. *L. D. Willcutt & Sons Co.* v. *Driscoll*, 200 Mass. 110. *Davis* v. *New England Railway Publishing Co.* 203 Mass. 470. The same principle has been maintained in other courts. *Emack* v. *Kane*, 34 Fed. Rep. 46. *Lewin* v. *Welsbach Light Co.* 81 Fed. Rep. 904. *A. B. Farquhar Co.* v. *National Harrow Co.* 102 Fed. Rep. 714. *Dittgen* v. *Racine Paper Goods Co.* 164 Fed. Rep. 85. *National Life Ins. Co.* v. *Myers*, 140 Ill. App. 392. *Gilbert* v. *Mickle*, 4 Sandf. Ch. 357. *Brace* v. *Evans*, 35 Pittsb. L. J. 399. *Murdock* v. *Walker*, 152 Penn. St. 595. *Barr* v. *Essex Trades Council*, 8 Dick. 101. *Beck* v. *Railway Teamsters' Protective Union*, 118 Mich. 497.

A decree must be entered giving to the plaintiff the relief prayed for.

So ordered.

Mariano DeMinico *v.* David Craig *et als.*

Worcester. October 6, 1910–February 27, 1911.

207 Mass. 593.

Equity Jurisdiction, To enjoin unlawful strike, Injunction, Damages — *Strike* — *Labor Union* — *Damages*.

Whether the purpose for which a labor strike is instituted is or is not a legal justification of the strike is a question of law.

In order that a labor strike should be a legal one it is necessary that the strikers should have acted in good faith in striking for a purpose which the court holds to have been a justification of the strike.

A labor strike is not a legal one merely because the strikers instituted it in good faith for a purpose which they thought to be a legal justification of the strike.

It is not a justification of a labor strike that a foreman is "distasteful" to some of the employees under him.

A labor strike properly cannot be said to be for the purpose of bettering the condition of the workmen concerned in it merely because its purpose is to escape from something which the workmen dislike.

It here was said by way of illustration, that, if a foreman was in the habit of using epithets so insulting to the workmen under his direction that they could not maintain their self respect while working under him, a strike to get rid of him would be a lawful one.

A labor strike to get rid of a foreman because some of the workmen under him have a dislike for him is not a strike for a legal purpose.

In a suit in equity seeking an injunction to restrain an unlawful labor strike to prevent the employment of the plaintiff as foreman by a certain firm, where the bill contains also a prayer for damages, if the plaintiff proves a case entitling him to relief, but before the time for a final decree the firm in question have stopped work and have ceased to employ either foremen or workmen, there is no occasion for an injunction and the only relief that can be granted is an award of damages.

In a suit in equity to enjoin an unlawful strike to prevent the employment of the plaintiff as foreman by a certain firm, with a prayer for damages, damage to the plaintiff's reputation may be a proper element of damage if he proves that damage to his reputation was in fact caused by the defendants' illegal action.

LORING, J. This bill is brought by a member of the Milford Branch of the Granite Cutters' International Association of America against the president and secretary of the association and certain members of it who constituted its adjustment committee. The plaintiff seeks to have the defendants enjoined from combining against his employment as a foreman by Wells Brothers, and for damages. The case went to a master and is before us on his report.[1]

The plaintiff and one Ardolino had been employed by Wells Brothers as the foremen of their stone quarry at Hopkinton since March, 1909 (when work was begun there to furnish the stone for a building in process of erection in Boston), until the matters here complained of took place in the following June. On the evening of June 22, 1909, the Milford Branch of the association voted to refuse to continue at work under the plaintiff and Ardolino as foremen, and pursuant to that vote none of the men employed by Wells Brothers went to work on June 23, the next day. A meeting was had between Wells Brothers and the adjustment committee of the association on that next day, June 23, and the result of it was an agreement between Wells Brothers and the officers of the association by which the men went back to work on the following day, June 24, and the plaintiff and Ardolino were removed as foremen on Saturday night, June 26. The plaintiff thereafter worked as a journeyman for Wells Brothers until January 10, 1910, when work at the quarry ceased.

The occasion for the strike was a discharge or a supposed discharge by the plaintiff of one Tronconi on the morning of June 22. There was a rule of Wells Brothers forbidding the men to enter the blacksmith shop. On the day in question Tronconi went into the blacksmith shop to get some tools which were being sharpened for him and was ordered out by Ardolino, the other foreman. Later the plaintiff gave Tronconi some instructions which Tronconi understood to mean that he was discharged. But the plaintiff always denied that he intended to discharge Tronconi. Thereupon on the same day the president and two members of the adjustment committee of the association had a conference with the plaintiff and Tronconi. At this conference Tronconi insisted that he had been unjustly discharged, the plaintiff denied that he had discharged him at all, and told him to go back to his work. The meeting of the association was held on the evening of that day, the strike followed the next day and

[1] The bill was filed in the Supreme Judicial Court on July 15, 1909. The case was referred to Arthur P. Hardy, Esquire, as master, and later was reserved by *Rugg*, J., upon the bill and answer and the master's report for determination by the full court.

was ended by the agreement reached on the afternoon of the second day, as we have already stated.

We pass by certain findings made by the master on issues raised by the pleadings which have now become immaterial, and come to his finding on the only issue now in dispute, namely, Was the strike for a justifiable purpose?

The master begins the part of his report in which that question is considered with this finding: "I find . . . that the respondents in securing his [the plaintiff's] removal were actuated by personal objections some of them had against his continuance in the office of foreman."

We take this finding as to the "respondents" to be a finding as to the action of the members of the Milford Branch of the association of which branch the defendants were officers, and that the defendants were liable if the action of the association was illegal because they personally participated in it. As is pointed out by the defendants in their answer, there are no sufficient allegations in the bill to make all the members of the association, as a class, parties defendant. See *Pickett* v. *Walsh*, 192 Mass. 572, 589.

The Milford Branch of the association had a membership of two hundred and sixty-four granite cutters and tool sharpeners working in four different shops, one of which was the shop in question run by Wells Brothers. Ninety-seven of the two hundred and sixty-four were employed by Wells Brothers, and of this number the master finds that probably not more than one-third attended the meeting on the evening of June 22.

The master's further findings on this point are in substance as follows: "While it is probable that the complainant made some minor mistakes, I am of the opinion that his work as foreman was acceptable to Wells Brothers Company, and that he was sufficiently competent to fill the position to the satisfaction of the company. No workman lost any pay or otherwise suffered any actual damage by reason of any mistakes made by the complainant. In regard to the enforcement of the rules, I find that the rules were established by the company, and that it was the duty of the complainant as foreman to see that they were enforced. I am of the opinion that the real complaint of the majority of the men claiming to have a grievance against the complainant and his fellow foreman Ardolino, was because of their enforcement of these rules, and that they did enforce them more strictly than the men had been accustomed to having them enforced." The master then states the attempts made by the plaintiff and Ardolino to enforce the rules of their employers, Wells Brothers. He finds that they (1) had attempted to have the rule against going to the blacksmith shop strictly enforced; (2) to stop the men's knocking off work a few minutes before the working day ended; (3) to stop their using the compressed air to brush their clothes; and (4) in one instance to stop a man's eating his luncheon during working hours. The master's findings which follow are in these words: "I find that in doing these things the complainant did only what it was his duty as foreman to do, and while the enforcement of the shop rules may have been more rigid than what the men were accustomed to, the personal attitude and conduct of the complainant toward the men was not unduly severe or in any way oppressive, although some of the witnesses testified that they so considered it. To attempt to give in detail the various reasons given by the witnesses for their dislike or objection to the complainant as foreman would require substan-

tially a résumé of the entire testimony. Many of these objections appear to one not skilled in the trade as being trivial, and none of them were brought to the attention of the adjustment committee or any officer of the branch until June 22, 1909. At the special meeting the dislike and various objections of the men were voiced to some extent. It is quite possible that what appears to an outsider to be trivial in a single instance may, in the aggregate, have appeared to the men engaged in the work to be of more or less serious importance. I am quite strongly of the opinion that were it not for the existence of the present case, many of the complaints brought out by the testimony would not have received any consideration by the branch or have been made the subject of a complaint to the committee or officers of the branch by the men themselves, yet it is clear that there was a substantial feeling of dislike and objection on the part of some of the men working at Wells Brothers to the continuance of the complainant and Ardolino as foremen." After a finding that the vote of the men on the evening of June 22 would not have been carried without the assistance of the votes from members not working for Wells Brothers, the master continues in these words: "I find that neither the complainant's habits, conduct nor character were such as to render him an unfit associate in the shop for ordinary workmen of good character, and that, but for the strike, Wells Brothers would not have removed the complainant from his position as foreman; that the strike was instigated by a comparatively few men who were successful in inducing other members to adopt their suggestions and join them in their purpose to secure the complainant's removal as foreman, although they testified that their purpose was to secure better conditions regardless of the consequences which might ensue to the complainant."

In two instances in his report the master has made a distinction between what was testified to by the defendants or in their behalf and what he finds to have been the fact. The first instance is where he finds that the plaintiff's personal attitude and conduct was not unduly severe or oppressive "although some of the witnesses testified that they so considered it." The second instance is where the master finds "that the strike was instigated by a comparatively few men who were successful in inducing other members to adopt their suggestions and join them in their purpose to secure the complainant's removal as foreman, although they testified that their purpose was to secure better conditions." We interpret this to be a finding that the purpose of this strike was not to "secure better conditions" for the workmen as distinguished from a purpose to get rid of a foreman who was disliked by some of the employees. To conclude the statement of the master's findings on the purpose of the strike he found that the reasons "for their dislike or objection" to the plaintiff and Ardolino were "trivial" and would not have received any consideration had it not been for the existence of the present case; and that these reasons "dislike and objection" were founded on a feeling of grievance because of the "enforcement of these rules . . . more strictly than the men had been accustomed to having them enforced."

Whether the purpose for which a strike is instituted is or is not a legal justification for it, is a question of law to be decided by the court. To justify interference with the rights of others the strikers must in good faith strike for a purpose which the court decides to be a legal justification for such interference. To make a strike a legal strike it is necessary that the strikers should have acted in good faith in striking for a purpose which the court holds to have been a legal purpose for a strike, but it is not

necessary that they should have been in the right in instituting a strike for such a purpose. On the other hand a strike is not a strike for a legal purpose because the strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike. As we have said already, to make a strike a legal strike the purpose of the strike must be one which the court as matter of law decides is a legal purpose of a strike, and the strikers must have acted in good faith in striking for such a purpose.

The purpose of the strike here in question has been found to have been to get rid of two foremen because some of the workmen had personal objections to and a dislike for them. Or, to use the words of their own counsel, because these foremen were "distasteful to [some of] the employees." We are of opinion that that is not a legal purpose for a strike. The plaintiff had a right to work and that right of his could not be taken away from him or interfered with by the defendants unless it came into conflict with an equal or superior right of theirs. The defendants' right to better their condition is such an equal right. But to humor their personal objections, their likes and dislikes, or to escape from what "is distasteful" to some of them is not in our opinion a superior or an equal right.

It is doubtless true that in a certain sense the condition of workmen is better if they work under a foreman for whom they do not have a personal dislike, that is to say, one who is not "distasteful" to them. But that is not true in the sense in which those words are used when it is said that a strike to better the condition of the workmen is a strike for a legal purpose. One who betters his condition only by escaping from what he merely dislikes and by securing what he likes does not better his condition within the meaning of those words in the rule that employees can strike to better their condition.

The defense in the case at bar has not failed because a strike to get rid of a foreman never can be a strike for a legal purpose. We can conceive of such a case. If, for example, a foreman was in the habit of using epithets so insulting to the men that they could not maintain their self respect and work under him, a strike to get rid of him in our opinion would be a legal strike. It is not necessary in the case at bar to define such cases and lay down their limits. It is wiser, in our opinion, in matters such as we are now dealing with, to go no farther than to decide each case as it arises. What we have just said is said to prevent misapprehension as to what is now decided. What we now decide is that a strike to get rid of a foreman because some of the employees have a dislike for him is not a strike for a legal purpose.

For these reasons a majority of the court are of opinion that the strike was not a legal one.

It appears that the work at Wells Brothers ceased on January 10, 1910. There is therefore no occasion for an injunction to issue in the case at bar.

The master found that the difference between the plaintiff's wages as foreman and as a journeyman for the period in which he was employed by Wells Brothers is $110.62, and then made the following finding: "In addition to this the complainant claims the right to recover damages for his loss of position as foreman, damage to his reputation, and the hindering of his prospects of advancement. I make no ruling on this contention of the complainant or his right to recover for the difference between what he formerly earned and that which he now receives, and without intimating in any way that he is entitled to recover anything, but in order that the

court may have all of the facts before it at the hearing on this report, I find that if the court shall rule that the strike was not justifiable and that the complainant is entitled to damages, the sum of $500 will amply compensate him for whatever damage he has suffered or may suffer, including loss of wages." We could not say that the plaintiff would not be entitled to recover for damage to his reputation if he proved that damage to his reputation was in fact caused by the defendants' illegal action. Under the finding of the master we are of opinion that the plaintiff is entitled to the larger sum with interest from January 10, 1910, when his work at Wells Brothers ceased, the bill having been filed in the preceding July. *Decree accordingly.*

The case was submitted on briefs.

J. M. Hallowell & F. T. Hammond, for the plaintiff.

F. W. Mansfield, for the defendants.

Lucius B. Folsom *et al. v.* George F. Lewis *et als.*

Suffolk. January 25, 1911–March 3, 1911.

208 Mass. 336.

Equity Jurisdiction, To enjoin unlawful strike, Unlawful interference with contract — *Strike — Labor Union.*

A strike by workmen engaged in a certain trade, to compel their employers to submit to an attempt to obtain for a labor union a complete monopoly of the labor market in this kind of business, by forcing all laborers who wish to work at the trade to join the union and by forcing the employers to agree not to employ workmen unless they are members of the union or have agreed to become members, is not for a lawful purpose, and a suit in equity may be maintained to enjoin it.

Conduct of workmen which directly affects an employer to his detriment by interference with his business is not justifiable in law unless it is of a kind and for a purpose that tend to procure benefits that the workmen are trying to obtain.

The purpose of adding to the power of a labor union, in order to put it in a better condition to enforce its demands in controversies with employers that may arise in the future, does not justify an attack on the business of an employer by inducing his workmen to strike.

A suit in equity may be maintained to enjoin the defendants from unlawfully interfering with the plaintiff's business by inducing persons under contract with the plaintiff for future service to break their contracts.

Knowlton, C.J. This is one of ten bills in equity, brought by different parties and heard together before a master,[1] to obtain an injunction to restrain the defendants from calling or declaring any strike and from proceeding with any strike already called to "unionize" the plaintiff's shop, from inducing or persuading persons under contracts of employment to break them, from conspiring or combining to prevent any person, by threats, picketing or intimidation from entering or continuing in the employ of the plaintiffs, and to recover damages. Exceptions were taken by both parties to the report of the master, and, after a hearing, the plaintiff's exceptions were sustained and the defendant's exceptions overruled. A decree for the plaintiffs was entered,[2] and the defendants appealed.

[1] Elbridge R. Anderson, Esquire.

[2] The final decree was ordered by *Hardy*, J. A previous interlocutory decree was made by *Richardson*, J.

Folsom *v.* Lewis.

There was a strike by the Boston Photo-Engravers Union against all the non-union employers of photo-engravers in Boston. The master found "that one of the objects of the strike was to compel the employers to recognize the union and to enter into an agreement with the union as such to employ none but union men, or non-union men provided they should join the union within thirty days and have a certificate of the right to work until the time that they had joined the union, and that the strike was a strike for the closed shop." He therefore found and ruled that the strike was not for a lawful object in these particulars.

The principal contention before us is that this finding is plainly wrong. The evidence upon this part of the case is not before us, except as the master has reported a large number of evidential facts, most if not all of which appear to be unquestioned, upon which his conclusion is founded. The only evidence that he was asked to report was that on the claim for damages.

The matters stated in the report amply justify, if they do not require, the finding that was made by the master. The general course of proceedings of the local union and its officers, and the International Photo-Engravers Union with which the local union was connected, and the officers of the International Union, some of whom were in Boston several months before the strike was called, seemingly engaged in the work of trying to obtain control of the labor in all the shops in Boston and to compel the assent by the employers to an agreement which should establish the closed shop in this business in Boston, all tend to support this finding of the master. While certain concessions were asked for in the interest of the men, just before the strike was ordered, most if not all of which the employers seem to have been willing to grant, the part of the proposed agreement which the representatives of the union absolutely insisted upon was article eight, "That the employing photo engravers signing this agreement shall employ none but members of the International Photo Engravers Union of N. A., or applicants for positions holding permit from the Boston Photo Engravers Union, No. 3 I. P. E. U." There is nothing in the case to indicate that there was anything in the condition of the business, or in the relations of the workmen to their employers, that made such a requirement of any importance to these employees, in reference to their profit or comfort, or other direct interest as employees. The master was undoubtedly right in finding that the purpose of the defendants and the real object of the strike were not so much to obtain certain slight advantages referred to in the proposed agreement, as to compel the employers, by inflicting this injury upon them, to submit to an attempt to obtain for the union a complete monopoly of the labor market in this kind of business, by forcing all laborers who wished to work to join the union, and by forcing all employers to agree not to employ laborers, except upon such terms as they could make with the combination that should control all labor in this business. This has been held to go beyond the limit of justifiable competition. Conduct directly affecting an employer to his detriment, by interference with his business, is not justifiable in law, unless it is of a kind and for a purpose that has a direct relation to benefits that the laborers are trying to obtain. Strengthening the forces of a labor union, to put it in a better condition to enforce its claims in controversies that may afterwards arise with employers, is not enough to justify an attack upon the business of an employer by inducing his employees to strike. *Berry* v. *Donovan*, 188 Mass. 353. *Plant* v. *Woods*, 176 Mass.

492. *Pickett* v. *Walsh*, 192 Mass. 572. This most important part of the decision of the master and of the judge is well sustained.

There was also a finding that the defendants interfered with persons who were under contracts with the plaintiffs for future service, by inducing them to break their contracts. This too was a special wrong which was a proper subject for an injunction.

There was evidence well warranting the finding of the master on the question of damages. *Decree affirmed with costs.*

D. V. McIsaac, (*H. F. Callahan* with him,) for the defendants.

W. M. Noble, for the plaintiffs.

Hampartzoon Minasian *v.* Robert L. Osborne *et als.*

Minas H. Minasian *v.* Same.

Suffolk. March 29, 1911–November 29, 1911.

210 Mass. 250.

Strike — Equity Jurisdiction, To enjoin unlawful strike — *Labor.*

The lasters employed in a shoe factory, where work is paid for by the piece and there is not sufficient work to keep all of the lasters employed all of the time, lawfully may maintain a strike undertaken in good faith to prevent the proprietor of the factory from permitting a laster in his employ to employ and pay a helper, for whose work the laster is paid by the proprietor in addition to being paid for his own work, the purpose of the strike being to cause the abolition of the system of such an employment of helpers in that factory because it resulted in an unequal distribution of the work of lasting at times when there was not enough work for all the lasters and thus affected their wages.

Two bills in equity, filed on December 23, 1910, the plaintiff in the first case being the father of the plaintiff in the second case, and the defendants in both cases being representatives and members of the Lasters' Union Local No. 1, an unincorporated association, alleging the facts which are stated in the opinion, and praying for an injunction restraining the defendants from maintaining a strike of the persons who before such strike were employed as lasters by the Randall Adams Company, a corporation, in its boot and shoe factory at Lynn, for the purpose of compelling or inducing the Randall Adams Company to cause Minas H. Minasian, the plaintiff in the second case, who was employed as a laster by the Randall Adams Company, to discharge from his employment as a helper Hampartzoon Minasian, the plaintiff in the first case, also praying for damages and for further relief.

In the Superior Court the cases were heard together by *Hitchcock*, J., who, with a recital that the pleadings were substantially the same and the facts identical in the two cases, made a memorandum of findings applicable to both cases, in which he found the facts which are stated in the opinion. The judge made an order that the plaintiffs were severally entitled to an injunction as prayed for and to damages and costs. In each of the cases a final decree was entered in accordance with this order, and in each case the defendants appealed.

The cases were argued at the bar in March, 1911, before *Knowlton*, C.J., *Morton*, *Hammond*, *Braley*, & *Rugg*, JJ., and afterwards were submitted on briefs to all the justices then constituting the court except *DeCourcy*, J.

F. W. Mansfield, for the defendants.

J. J. Feely, (*R. Clapp* with him,) for the plaintiffs.

Minasian *v.* Osborne.

RUGG, C.J. The material facts which give rise to this controversy (as found by the judge of the Superior Court) are that the plaintiff Minas, a skilled laster by trade, had a contract for labor as a laster with the Randall Adams Company, terminable at the will of either. With the consent of his employer, he had in turn employed as helper his father, Hampartzoon, the other plaintiff, who was not able to do all the work of a laster, and who received no wages from the Randall Adams Company and had no relation as servant to it. The work was piece work, and Minas alone received, and was entitled to receive, the compensation for their joint labor. This method of work was known in the craft as "contract" or "cross-handed."

Both of the plaintiffs were, or had been, members of the Lasters' Union, an unincorporated association, of which the defendants are representatives and members. The defendant Osborne, who is the business agent of the Lasters' Union Local No. 1, notified the employer, the Randall Adams Company, that unless the father was discharged the shop's crew would be "pulled out." The father did not work for a day or two, but returned to work after the superintendent of the employer told the son, Minas, to get him and put him to work again. The next day all the other lasters went out on an orderly strike, which was indorsed by the Union. As a consequence, both plaintiffs have lost their employment. The Lasters' Union substantially controls the labor market in the manufacture of shoes, for practically all lasters are members of the Union. The effect of the strike, if continued, will be to prevent Randall Adams Company from continuing business unless it discharges Minas or compels him to dispense with his assistant.

Here is a plain and tangible injury to the plaintiffs as the proximate result of the acts of the defendants. This gives a cause of action to the plaintiffs unless the defendants have a sufficient justification for their conduct. If they have acted without good cause or excuse, they are liable. *Berry* v. *Donovan*, 188 Mass. 353, 356. *Quin* v. *Leathem*, [1901] A. C. 495, 510. *South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905] A. C. 239, 244, 246, 251. As was said in *DeMinico* v. *Craig*, 207 Mass. 593, at 598, "Whether the purpose for which a strike is instituted is or is not a legal justification for it, is a question of law to be decided by the court."

The inquiry must be directed to the character of the justification proffered by the defendants in excuse for their conduct. The purpose of the strike (as found by the Superior Court) was "to compel the plaintiff Minas . . . to cease employing his father to help him and to induce the employer of Minas either to discharge the father or to require Minas to cease employing a helper, or, failing that, to discharge Minas from its employment." But it has been found also that the defendants are not actuated by any ill feeling toward either of the plaintiffs, and that the strike is wholly disconnected with any question of membership in the Union. The basis of the strike is objection to the system known as contract labor or cross-hand work. It follows that the real purpose of the strike is to cause the abolition of that system of work in this shop.

It is not of much consequence whether the object of the strike is stated to be the discharge of the father and son without hostility toward them, but for the reason that they practise a certain system of shop labor, or the abolition of the system of shop labor, with the incidental result that one or both of the plaintiffs may be discharged. In its practical effects upon the rights of the parties, the question of law involved is the same whichever way it is put.

The question presented for decision is whether the abolition of this particular system of shop work is a legal justification for the interference with the rights of these plaintiffs which arises from an orderly strike by fellow employees.

"The objection to the system is," as found by the trial judge, "that where two men worked together, as Minas and his father were doing, they can do more work in a day or a week than any single man working without a helper, and that as a result the men who worked without helpers would not get their fair share of the work that was to be done, and would thus be unable to have a chance to earn as much as they could if there were no helpers employed. The custom in the factory was that when a laster had completed his case of shoes or had nearly completed it so as to be ready for another case, he would put his name upon a list, and it was understood that cases of shoes would be furnished him for his work in the order in which the names stood upon the list. If there was plenty of work so that any laster could have all he could do, the fact that two men working together could do more than he could would not affect the wages he would ordinarily receive; but in case there was a scarcity of work, or not sufficient work to keep all the lasters employed, the laster who had a helper might be able to do more work and other lasters might not be able to obtain work. In that aspect of the case their compensation might be affected by the system of contract labor or cross-hand work." The controversy as presented upon this record is not between employer and employee, but between rival sets of workmen, both of whom were at work in the same shop upon materials of one manufacturer.

This is not a strike which involves any inquiry as to the plaintiffs' habits, conduct or character which might render them unfit or improper shopmates. It is not for the establishment of any system of shop work or rules directed to the curtailment or limitation of production or interference with reasonable industrial advancement. It is not aimed to prevent the highest efficiency of labor or the use of modern or economical machinery. It was not instituted to promote a closed shop or to compel anybody to join or to leave any union, nor primarily to cause the discharge or employment of any person or class of persons. If this results in any instance, it is incidental and not essential to the chief end. It does not go to the extent of interdicting the absolute and unqualified right of the individual to work, if he desires, contrary to the will or rules of a combination. It is not based upon objections to shop rules established for the reasonable protection of the rights of the employer or promotion of the good order or economical and efficient service of employees. It is not directed against the education of apprentices or those who are trying to learn the trade. It does not appear to be for the establishment or preservation of a monopoly, and this is not indicated by the framework of the bill. It is not directed against piece work as distinguished from day work, nor against any other method of employment where superior skill, dexterity or swiftness secures commensurately higher rewards than inefficiency, carelessness or slothfulness. It does not directly or immediately affect the general convenience, necessities or safety of the public. Its ostensible object is not used as a mask for any ulterior design. The direct and main purpose is to secure a change in a system of work which is asserted to be unjust in its practical operation.

It is contended that this system in its final analysis resulted in an unequal distribution of the work of lasting in slack times and thus affected the wages of the strikers, although it did not so operate when there was work enough to keep all the employees

busy all the time. The finding of the Superior Court was in substance to this effect and it is supported by evidence. There is nothing to indicate that the strike was not undertaken in good faith against this system. An honest effort to better conditions of employment by laborers is lawful. The right of the plaintiffs to work upon such terms as they chose is incident to the freedom of the individual. That "right . . . could not be taken away . . . or interfered with by the defendants unless it came into conflict with an equal or superior right of theirs." *DeMinico* v. *Craig*, 207 Mass. 593, 599. The right of one person to dispose of his labor freely is not superior to the same rights in others. The right of one to work under unsanitary conditions does not go to the extent of preventing others from striking in order to secure a mitigation of these conditions merely because such a strike may interfere with the desire of the first to continue to work under those conditions. The same principle applies where a distribution of work discriminates between men of average capacity and gives an undue preference to one over another in times when there is a dearth of work. A system of giving out work which, under existing conditions, operates unjustly, is a condition of employment in which all workmen affected by it in a particular shop may have a legal interest. Nor is injury to the employer a reason why a strike to remedy such a condition should be enjoined.

The right of the employer is no more absolute in respect of a condition of employment like this than it is as to hours of labor or rate of wages. It is not a subject as to which he is entitled to special protection against an orderly and otherwise lawful strike. *Pickett* v. *Walsh*, 192 Mass. 572. The conduct of these defendants, although directly affecting to their detriment the labor habits of the plaintiffs, appears to have sufficient justification in the fact that it is of a kind and for a purpose, which has a direct relation to the benefits of a more uniform distribution of work, and thus of wages among equally skilled or competent workmen during dull seasons. This was the object which the defendants were trying to obtain.

While the plaintiffs' contractual rights to labor, although terminable at will, were entitled to protection against wanton interference (*Citizens Loan Association* v. *Boston & Maine Railroad*, 196 Mass. 528, and cases cited), they were not so assured or valuable in their nature as are valid contracts for continued service for a definite period. It may well be that a stronger reason might be needed to justify interference with such contracts than with those here in question. We do not go beyond what is necessary to this decision.

The decision of this case depends upon a somewhat narrow interpretation of the findings of the trial court. Construing them as we do, this seems to be a clash of equal rights between fellow laborers, where each could use any lawful means to enforce those rights. No question is presented as to the unlawfulness of the means employed. This is not a case in its facts like those presented for adjudication in *Plant* v. *Woods*, 176 Mass. 492; *Vegelahn* v. *Guntner*, 167 Mass. 92; *Walker* v. *Cronin*, 107 Mass. 555; *Carew* v. *Rutherford*, 106 Mass. 1; *Sherry* v. *Perkins*, 147 Mass. 212; *Berry* v. *Donovan*, 188 Mass. 353; *Reynolds* v. *Davis*, 198 Mass. 294; *L. D. Willcutt & Sons Co.* v. *Driscoll*, 200 Mass. 110; *DeMinico* v. *Craig*, 207 Mass. 593; *Folsom* v. *Lewis*, 208 Mass. 336; but it comes within principles recognized and stated in several of those cases and applied in *Pickett* v. *Walsh*, 192 Mass. 572, at 579 *et seq.* In the opinion of a majority of the court the entry in each case must be *Decree reversed; bill dismissed.*

Frank Hanson *v.* George Innis *et als.*

Middlesex. January 16, 1912–February 29, 1912.

211 Mass. 301.

Unlawful Interference — Strike — Labor Union — Equity Pleading and Practice, Parties — *Equity Jurisdiction,* To enjoin unlawful strike, Damages.

In a suit in equity against the officers and members of an unincorporated labor union for unlawfully causing the discharge of the plaintiff as the foreman of a granite company, if it appears that the defendants instituted and continued an unlawful strike which compelled the superintendent of the granite company as a last resort to agree to leave the question whether he should discharge the plaintiff to a vote of the workmen at the quarry and that upon a majority of such workmen voting against the retention of the plaintiff the superintendent discharged him, the plaintiff is entitled to relief against the defendants who instituted and maintained the strike and not merely against those workmen who voted at the quarry for his discharge.

In a suit in equity against the officers and members of an unincorporated labor union for unlawfully causing the discharge of the plaintiff as the foreman of a granite company, if it appears that unlawful acts of the defendants caused the discharge of the plaintiff and made it impossible for him to procure other employment, the plaintiff is entitled to recover damages not only for the loss of wages due to his discharge but also, once for all, for his present and prospective inability to procure employment, which may continue for an indefinite time, caused by the unlawful acts of the defendants.

Bill in equity, filed in the Supreme Judicial Court on August 27, 1909, against officers and members of the Milford Branch of the Quarry Workers International Union of North America and of the Milford Branch No. 88 of the Derrickmens International Union of North America, voluntary unincorporated associations, seeking relief by way of injunction and damages for causing the discharge of the plaintiff in May, 1909, as foreman of the Massachusetts Pink Granite Company, a corporation doing business in Milford.

The case was referred to Arthur P. Hardy, Esquire, as master. The following facts, among others, appeared by his report. In February, 1909, one Perry, who was the superintendent of the granite company, employed the plaintiff under an oral agreement as foreman of that company at $21 a week. He was to continue in charge of the quarry until a contract for cutting the stone for the John Hancock Building in Boston had been completed and thereafter as long as there was work to be done. The defendants Dacey and Mahoney applied for work under the plaintiff but were refused because there were no vacancies. On motion of the defendant Dacey a vote was passed by the quarry workers' union that the plaintiff be required to join that union and that his initiation fee be fixed at $50, the usual fee being $1.50. The plaintiff did not make application to join the union, and Perry was notified of a vote of the union that its members should not work under the plaintiff as foreman. The plaintiff was not discharged at that time, and the next day the defendants in the employ of the granite company refused to work, and a strike was begun which continued about ten days, during which Perry made unsuccessful attempts to induce the striking defendants to resume work. Finally Perry proposed that all the men working for the granite company should take a vote at the quarry and that he should abide by the decision of the majority. Such a vote was taken by ballot at the quarry with the result that fourteen workmen voted for the plaintiff and sixteen against him, whereupon Perry notified the plaintiff that the vote had gone against him and that he could retain him no longer in the employ of the company.

The master made the following findings: "I find that the purpose of the strike was to compel the discharge of Hanson [the plaintiff] as foreman, not because of his treatment of the men working under him or because he was otherwise incompetent to act as foreman. In my opinion it was instituted simply and solely because of the influence which Dacey had over the men working for the Massachusetts Pink Granite Company, and he exerted this influence to advance his private interests in an attempt to secure redress for what he considered was unfair treatment on the part of Hanson." In a supplemental report the master found that "Hanson as a foreman was entirely satisfactory to Perry and he desired to retain him in the employ of the company in that capacity," and "that the vote proposed by Perry was taken as a result of coercion imposed upon him by the unions and the defendants by instituting and continuing the strike."

Soon after his discharge the plaintiff was employed again by the granite company but not in the capacity of foreman or quarryman and his employment lasted for only four days. The plaintiff attempted to secure work at other quarries in Milford and elsewhere but in each instance was refused work because he was unable to give an affirmative answer to the question as to whether or not he had effected a settlement with the union. The master found that the plaintiff by reason of his discharge lost as wages to the time that the quarry was shut down in December, 1909, the sum of $588, and that he was deprived by the action of the defendants and other members of the union from securing employment elsewhere. He also found as follows: "It is a fair inference from the evidence introduced that this inability to secure employment as a journeyman quarryman will continue indefinitely or until such time as the complainant becomes a member of the union; also that his inability to secure employment as a foreman in the trade or calling in which he is skilled and the only one for which his experience and training fit him will continue indefinitely. If the court rule that the complainant is entitled to recover damages, then I find and rule that he is entitled to damages in the sum of $2,000, including loss of wages as above stated."

The defendants' exceptions to the master's original report were as follows:

"1. Because it appears by the report that the plaintiff was discharged from the quarry by Mr. Perry as the result of a vote taken by secret ballot by men working at the quarry, which vote the plaintiff was cognizant of, apparently acquiesced in, and made no objection to until he found that the vote was against him. On this state of facts the defendants asked the master to rule that the plaintiff was estopped from bringing any action against the defendants by reason of his own participation and apparent acquiescence in the vote, but the master declined to so rule.

"2. Because the master in assessing damages for the plaintiff has not confined himself to actual damage, but has allowed the plaintiff damages based upon apprehension of inability on the part of the plaintiff to secure work in the future; and because damages over and above the amount actually shown to be lost in wages less the amount that he had earned has been allowed by the master.

"3. It appears that the plaintiff when he became foreman took a formal withdrawal card from the union [not one of those represented by the defendants] but it does not appear that he severed his connection therewith, neither did he appeal to the local branch or any officer or body connected with the organization for relief. On this state of facts the defendants asked the master to rule that the plaintiff should have exhausted the remedies provided in the constitution of the union to which he belonged

before applying to the courts for relief and objection is taken to the master's refusal so to rule.

"4. It appears that it was the vote of sixteen workmen employed at the quarry which caused Hanson to be discharged by Perry and the defendants asked the master to rule that these sixteen individuals alone, if any, should be held as defendants and because the master refused so to rule.

"5. Since the strike was directed against the Massachusetts Pink Granite Company and it is not a party to the plaintiff's bill, it is immaterial whether the strike is justifiable or not, and objection is taken to the master's report because he refused to so rule."

The defendants' exceptions to the master's supplemental report were as follows:

"1. Because it is against the evidence.

"2. Because it is against the weight of the evidence.

"3. Because a fair construction and interpretation of the evidence upon which said supplemental report is based does not justify the findings therein contained.

"4. Because the findings arrived at therein by the master are inconsistent with the statements of fact contained therein upon which the master bases said findings."

The case came on to be heard before *Morton*, J., who reserved it for determination by the full court upon the pleadings, the master's report, the master's supplemental report, and the exceptions of the defendants.

C. L. Newton, for the plaintiff.

F. W. Mansfield, for the defendants.

Sheldon, J. None of the exceptions taken by the defendants to the master's original report can be sustained.

The plaintiff never had agreed to abide by the result of the vote taken at Perry's suggestion, and had had nothing to do with causing it to be taken. There is no ground for the contention that he was estopped by any participation or apparent acquiescence therein from bringing his action against the defendants.

The plaintiff was not a member of either of the labor unions named in the bill and was not bound by any of their rules. He was not obliged to seek relief in their tribunals, but could resort to the courts to obtain redress for any wrong done to him by them. That he had been a member of another different labor union is not material.

On the facts found by the master, the plaintiff's discharge and his inability to obtain other work were caused by the unlawful acts of the defendants. *Berry* v. *Donovan*, 188 Mass. 353. Perry acted under their compulsion. Of course the strike intended to obtain this unlawful end was unjustifiable; and it was material to show that the injury done to the plaintiff had been procured by unlawful means. The remedy accordingly was against the defendants, and not merely against the sixteen men who had voted against the retention of the plaintiff.

The plaintiff is entitled in this suit to recover once for all his entire damages sustained from the unlawful acts of the defendants in procuring his discharge and making it impossible for him to procure other employment. *DeMinico* v. *Craig*, 207 Mass. 593, 600.

The findings in the master's supplemental report are not inconsistent with the facts upon which they are based. The other exceptions thereto depend upon the evidence, which has not been reported, and so none of them can be sustained.

Hanson *v.* Innis.

Upon the facts reported by the master the plaintiff is entitled to a decree for damages for the sum of $2,000. *Berry* v. *Donovan*, 188 Mass. 353. *Pickett* v. *Walsh*, 192 Mass. 572. *DeMinico* v. *Craig*, 207 Mass. 593. *Folsom* v. *Lewis*, 208 Mass. 336. This gives him full damages, past and future. As he has asked for damages for all time, and at the argument did not ask for an injunction, it is not necessary now to discuss that matter. *Decree accordingly.*

Opinion of the Justices to the Senate.

211 Mass. 618.

A statute undertaking to exempt trade unions and associations of employers and their members and officials from liability for tortious acts committed by or on behalf of such a union or association would be unconstitutional.

The following order was passed by the Senate on April 22, 1912, and on April 26, 1912, was transmitted to the Justices of the Supreme Judicial Court. On May 8, 1912, the Justices returned the answer which is subjoined.

Ordered, That the opinion of the Justices of the Supreme Judicial Court be required by the Senate upon the following question of law:

Is an act of the Legislature constitutional which provides that an action shall not be entertained by any court against a trade union, or an association of employers, or against any members or officials thereof, in respect to a tortious act alleged to have been committed by or on behalf of a trade union or an association of employers?

And be it further ordered, That the Justices of the Supreme Judicial Court be informed that the foregoing question is propounded with a view to legislation upon the subject therein mentioned, and that, for their more particular information, a copy of House Document No. 377, being a bill accompanying a petition now pending in the Legislature and relating to the subject-matter concerning which the foregoing question is propounded, be transmitted to the Justices.

To the Honorable Senate of the Commonwealth of Massachusetts:

We, the Justices of the Supreme Judicial Court, have considered the question upon which our opinion is required by the order of April 22, 1912, a copy of which is hereto annexed, and respectfully submit this opinion:

The Constitution of the United States in art. 14 of the Amendments expressly provides that: No State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Absolute equality before the law is a fundamental principle of our own Constitution. Frequent expressions to this effect are found in various articles. For example, it is said that "All men are born free and equal;" that "Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws;" that "Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character;" and that the several departments of government are separated "to the end it may be a government of laws and not of men." Declaration of Rights, art. 1, 10, 11 and 30.

The proposed bill to exempt associations of employers and trade unions and

their members and officials from actions of tort committed by or on behalf of such association or union is plainly contrary to these constitutional guaranties. It gives to certain favored ones, selected arbitrarily, immunity from that equal liability for civil wrongs which is a sign of equality between citizens and residents. It undertakes to clothe combinations of employers and laborers with special power denied to other employers and laborers and other members of society. In another aspect, it deprives all individuals and associations, other than those named, of the protection to safety, liberty and property which any free government must secure to its subjects. It takes from them the unhampered right to assert in the courts claims against all who tortiously assail their person and property and to recover judgment for the injuries done. It would prevent all persons from having recourse to law for vindication of rights or reparation for wrongs against the privileged few therein designated. It imposes upon some burdens of which others in like situation are relieved. It throws obstacles in the pathway of those outside unions or associations in the pursuit of their livelihood and in the prosecution of their business not interposed in the way of members of such organizations. It purposes to give to one class of wage-earners advantages withheld from others not belonging to a trade union who are engaged in the same kind of work and for the same employer. It frees one set of employers from obligations to which their competitors, who are independent of the association, are subjected. In short, it destroys equality and creates special privilege.

Manifestly, it needs no discussion and no further statement to demonstrate that legislation like that embodied in the bill would violate in many respects underlying principles and fundamental provisions of the Constitution of this Commonwealth and of the United States.

Arthur P. Rugg.
James M. Morton.
John W. Hammond.
William Caleb Loring.
Henry K. Braley.
Henry N. Sheldon.
Charles A. DeCourcy.

Commonwealth *v.* Walter M. Libbey.

Same *v.* J. F. Crane.

Essex. Suffolk. November 17, 1913–January 9, 1914.

216 Mass. 356.

Constitutional Law — Strike — Statute, Construction — *Words*, "Newspapers."

St. 1910, c. 445, making it a criminal offense for an employer, during the continuance of a strike, lockout or other labor trouble among his employees, to advertise publicly in newspapers or otherwise for employees without plainly and explicitly mentioning in such advertisements "that a strike, lockout or other labor disturbance exists," is constitutional, its purpose and effect being to protect innocent searchers for work from being invited to seek employment where a strike is in progress in ignorance of the true state of affairs.

If by a rational interpretation a legitimate purpose can be attributed to a statute, which otherwise might be unconstitutional, such legitimate purpose must be assumed to have been that of the Legislature.

St. 1912, c. 545, providing that St. 1910, c. 445, making it a crime for an employer to advertise publicly for employees during a strike without plainly mentioning that a strike exists, "shall cease to be operative when the State board of conciliation and arbitration shall determine

Commonwealth *v.* Libbey.

that the business of the employer . . . is being carried on in the normal and usual manner," is constitutional, this statute providing only one way and not the exclusive way of determining that such a strike is at an end, and the employer having a right, if the board makes no finding or even finds that a strike still exists, to prove the cessation of the strike in any lawful manner.

St. 1910, c. 445, making it a crime for an employer to advertise publicly "in newspapers, or by posters or otherwise, for employees" during a strike without plainly mentioning in such advertisements that a strike exists, applies to a case where such an advertisement is published in only one newspaper, the plural word "newspapers" being used in a generic sense to designate a publication in one or more papers.

RUGG, C.J. St. 1910, c. 445, in substance requires that every employer who, during a strike or labor disturbance among his employees, publicly advertises in newspapers for persons to work in place of the strikers, "shall plainly and explicitly mention in such advertisements . . . that a strike, lockout or other labor disturbance exists." The defendants were found guilty of infractions of this act.[1] The chief question is whether it is within the power conferred by the Constitution upon the Legislature to enact the statute. The Legislature may "make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances" not repugnant to the Constitution. Const. Mass. c. 1, § 1, art. 4. This is strong language, and it always has been interpreted broadly in its application to statutes enacted from time to time by the Legislature to satisfy the changing needs of society. But the Constitution also guarantees to all citizens the blessings of liberty and the right to happiness and safety, and the right to acquire and possess property. In general terms also the Federal Constitution gives substantially the same assurances. The liberty which thus has such ample constitutional security does not signify absolute and unrestrained license to follow the dictates of an unbridled will. Constitutional freedom means a liberty regulated by law. The right of the individual is subject to reasonable restraints made by general law for the common good. Said Mr. Justice HUGHES, in *Chicago, Burlington & Quincy Railroad* v. *McGuire*, 219 U. S. 549, 567: "Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." The present statute interferes with individual liberty to some extent. But the State, in the exercise of the police power, may legislate for the public health, the public safety and the public morals, and in a certain qualified sense for the public welfare, and thus restrict the freedom of the individual. *Commonwealth* v. *Strauss*, 191 Mass. 545, 550. *Commonwealth* v. *Beaulieu*, 213 Mass. 138. *Opinion of the Justices*, 208 Mass. 619.

It is often difficult to draw the line between the rights of the citizen to pursue and enjoy liberty, to seek and obtain happiness and to acquire and possess property, on the one side, and the right of the State to enact laws in the general interests of all the people, on the other side. The law must not be arbitrary; it must be reasonable and general in its operation, and have a manifest tendency to promote public health, safety and morality in some aspect. The governing constitutional principles have been discussed often and in great elaboration. *Mutual Loan Co.* v. *Martell*, 200 Mass. 482, affirmed 222 U. S. 225. *Dewey* v. *Richardson*, 206 Mass. 430. *John P. Squire & Co.* v. *Tellier*, 185 Mass. 18. *Wyeth* v. *Cambridge Board of Health*, 200 Mass. 474.

[1] The trial of the defendant Libbey was in Essex County before *Chase*, J., and that of the defendant Crane was in Suffolk County before *Brown*, J. In each case the jury returned a verdict of guilty, and in each case the defendant alleged exceptions, raising the question of the constitutionality of St. 1910, c. 445, and St. 1912, c. 545, amending it.

Lemieux v. *Young*, 211 U. S. 489, 494. *Griffith* v. *Connecticut*, 218 U. S. 563. *Commonwealth* v. *Jacobson*, 183 Mass. 242. *Jacobson* v. *Massachusetts*, 197 U. S. 11. *Lochner* v. *New York*, 198 U. S. 45, 53. *Adair* v. *United States*, 208 U. S. 161. *Laurel Hill Cemetery* v. *San Francisco*, 216 U. S. 358. *Chicago Dock & Canal Co.* v. *Fraley*, 228 U. S. 680. *Minnesota Iron Co.* v. *Kline*, 199 U. S. 593.

This statute is not open to the objection that it is class legislation. It applies to all employers similarly circumstanced. It is not arbitrary, and has a reasonable relation to the public interests. It does not destroy equality before the law, nor create special privileges. *Opinion of the Justices*, 207 Mass. 601, and cases there cited. *Williams* v. *Fears*, 179 U. S. 270. *Adams* v. *Milwaukee*, 228 U. S. 572, 582. *Chesapeake & Ohio Railway* v. *Conley*, 230 U. S. 513, 522. *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288. "The Legislature is permitted to make a reasonable classification and before a court can interfere with the exercise of its judgment it must be able to say 'that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched.' " *Barrett* v. *Indiana*, 229 U. S. 26, 30. This statute does not interfere with the pursuit of happiness. It is urged that it hampers the right to conduct business beyond what is reasonable, and thus violates the right to acquire and possess property and to make contracts to that end. The situation in an industrial enterprise when a strike, lockout or other labor disturbance is in progress, manifestly may be quite different from the standpoint of prospective workmen from what it is when peaceful conditions obtain. It is not necessary to enumerate them. Some of them have been adverted to in decisions of this court, and others of a different character readily can be imagined. *Plant* v. *Woods*, 176 Mass. 492. *Nute* v. *Boston & Maine Railroad*, 214 Mass. 184. The social and economic surroundings of an employment might be attractive in the absence of labor troubles, and repulsive when they exist, to considerable numbers of men. Possibly the opposite may be true as to others in society. The disinclination on the part of some to seek employment in the place of strikers may arise from various causes. In view of these considerations it may have been thought that laborers ought to be given a true statement of the condition of labor in this regard, and that any advertisement should give this fact if it exists, as a protection to those who might answer either from a distance or from the neighborhood. It cannot be pronounced unreasonable on the part of the Legislature to take measures to shield those who labor from being induced in ignorance to seek employment in a place where are the features prevailing in a strike. The statute seems to have a reasonable relation to the accomplishment of the end, and the end itself is one within the scope of legislation.

It has been argued that the purpose of the statute is to harass the employer. But this cannot be presumed unless no other rational interpretation is possible. Every assumption is made in favor of the constitutionality of an enactment of the Legislature. This statute has a legitimate purpose and effect in protecting innocent searchers after work from being invited to seek employment where a strike is in progress in ignorance of the true state of affairs. It must be presumed that this was the real purpose of the legislative department.

The statute is not unreasonable in its terms. It requires no more than the statement of a fact, a representation of the truth, in the advertisement or solicitation for employees. It does not undertake to confine the statement to any form of words. It

may include such amplification in respect to the details of the truth as the employer desires. If he is suffering from an oppressive or unlawful strike, that fact may be stated. The statute being enacted for the protection of innocent third persons, it is of no consequence whether the strike is justifiable or wrongful. The protection of the public is as important in the one case as in the other. The instructions in this respect in the Crane case were too favorable to the defendant. This being the purpose of the act, it cannot be said that it is invalid because it requires the announcement of the illegal act of others as a condition precedent to the effort to employ labor. If sometimes this may happen, it is incidental and not the necessary aim of the statute.

The statute does not undertake to deny to an employer whose men are on a strike freedom of action in employing others to take their places provided he tells the facts, and hence *Mathews* v. *People*, 202 Ill. 389, is not applicable. The statute under consideration in *Josma* v. *Western Steel Car & Foundry Co.* 249 Ill. 508, was different in its terms from the one now before us, and it is not necessary to discuss it. If, however, there is anything in either of these decisions inconsistent with the conclusion here reached, we are not disposed to follow them.

An attack also is made on the constitutionality of St. 1912, c. 545, which provides that St. 1910, c. 445, "shall cease to be operative when the State Board of Conciliation and Arbitration shall determine that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on in the normal and usual manner and to the normal and usual extent. Said board shall determine this question as soon as may be, upon the application of the employer." The argument in support of this contention is founded on the assumption that the only way in which the termination of the labor trouble can be proved is by a finding of the board as pointed out in the statute. It is true that this statute relates to evidence of the cessation of the strike. But it does not undertake to provide the exclusive method of determining when a strike is at an end. That may be proved by any competent evidence. If a finding is made by the board that the strike is at an end, then there is no limitation upon the right of the employer to advertise for help. If no finding is made, or even if a finding adverse to the employer is made, it is not binding upon an employer. The fact of the cessation of the strike may be proved in any legal way. In any prosecution it is necessary for the Commonwealth to establish that a labor disturbance existed at the time of the advertisement by competent evidence outside the statute. It follows that thus interpreted there is no vesting of judicial functions in a commission by the statute, and that this part of it is not open to objection on constitutional grounds.

The statute is not confined in its operation to cases where the advertisement is printed in more than one newspaper. The plural word "newspapers" is used in a generic sense and applies to a publication in one or more papers.

In each case let the entry be *Exceptions overruled.*

J. J. Feely, (*R. Clapp* with him,) for the defendant Libbey.

D. D. Corcoran, for the defendant Crane, submitted a brief.

H. C. Attwill, District Attorney, for the Commonwealth in the case against Libbey.

A. C. Webber, Assistant District Attorney, for the Commonwealth in the case against Crane.

William J. Hoban *et ali. v.* William F. Dempsey *et als.*

Suffolk. December 2, 1913–February 28, 1914.

217 Mass. 166.

Labor Union — Longshoreman — Contract, Validity — *Equity Jurisdiction*, To enjoin unlawful interference, Conspiracy — *Monopoly*.

A contract between the members of a labor union of longshoremen and the representatives of certain steamship companies, by which it is agreed that all longshoremen employed by the steamship companies shall be members of that union whenever such men are available and that, whenever such men are not available, men not members of that union may be employed, if entered into freely and fairly for the mutual benefit of the contracting parties without any intention of injuring other longshoremen or of coercing them into joining the union, is valid, and its performance will not be enjoined in a suit in equity brought by longshoremen in the same port who are not members of that union.

An essential element of a boycott is intentional injury to somebody. By Rugg, C.J.

In a suit in equity to enjoin the performance of a contract between the members of a labor union of longshoremen and the representatives of the steamship companies loading and discharging at Boston, where the bill was dismissed by this court on the ground that the contract was valid, there was evidence which would have warranted a finding that the union whose members were parties to the contract represented "practically the whole of the longshoremen of the port," but this was not found as a fact by the justice who heard the case and it was plain from the allegations of the bill and the report of the evidence at the trial, that relief was not sought on the ground that the contract was in violation of the Sherman anti-trust act or on the ground that it established an unlawful monopoly, and consequently these questions could not be raised and were not passed upon, and it was not necessary to consider St. 1911, c. 503.

Bill in equity, filed in the Supreme Judicial Court on February 25 and amended on February 28, 1913, by certain officers of Noddle Island Assembly No. 5789 of the Knights of Labor, an unincorporated association, for themselves and all other members who wish to join as parties, against the officers and members of certain unincorporated associations of longshoremen and certain persons individually and as members of the executive committee of the Transatlantic Steamship Conference, a voluntary organization, to enjoin the defendants from carrying out a certain agreement in writing dated February 20, 1913, between persons representing the Boston Transatlantic Steamship Lines and contracting stevedores and persons representing the International Longshoremen's Association, and from refusing to employ the plaintiffs and the members of their union for the reason that they are not members of the unions organized by the defendants: praying also for an injunction to restrain the defendants from conspiring to injure the plaintiffs by preventing them from obtaining employment, and to restrain the defendant members of unions from conspiring to prevent by threats and intimidation the defendant representatives of steamship companies from employing the plaintiffs unless they become members of the unions formed and controlled by the defendants; and for further relief.

The portion of the contract of February 20, 1913, alleged to be illegal was as follows: "Article I. It is distinctly understood and agreed that all Longshoremen employed by the party of the first part in connection with loading and unloading of ships shall be members of the International Longshoremen's Association whenever such men are available and whenever such men are not available then the party of the first part has the right to employ such other men who can perform the work until

such time as the party of the second part can furnish the men, but the party of the first part has the right to employ such non-union men until the completion of the day on which they are employed."

The case was heard by *Braley*, J., who made the findings which are quoted in the opinion. He ruled as matter of law that the bill could not be maintained, and ordered that a decree be entered dismissing it. A final decree was entered dismissing the bill; and the plaintiffs appealed.

The case was argued at the bar in December, 1913, before *Rugg*, C.J., *Morton*, *Hammond*, *Braley*, & *DeCourcy*, JJ., and afterwards was submitted on briefs to all the justices then constituting the court.

E. A. Whitman, for the plaintiffs.

S. R. Jones, for the defendants Thomas, Cusick and Wylde.

F. W. Mansfield, for certain other defendants.

RUGG, C.J. The plaintiffs are members of a labor union of longshoremen. There are two groups of defendants, the one members of a different labor union of longshoremen, and the other representatives of certain transatlantic steamship companies. The plaintiffs seek to enjoin the defendants from proceeding with an agreement which consists of thirty articles covering most, if not all, of the conditions of labor likely to arise in the course of such employment. One paragraph provides in substance that all longshoremen employed by the contracting transatlantic steamship lines shall be members of the defendant union whenever such men are available, and whenever such men are not available, then other men may be employed until the defendant union can supply men, but in any event men not members of the defendant union may be employed until the end of the day. It is contended that this clause is so illegal that performance of the contract ought to be enjoined at the instance of third parties. A trial was had before a single justice who, at its conclusion, found that the "contract was freely and fairly entered into between the contracting parties without any purpose or motive on the part of the representatives of the International Longshoremen's Association [the defendant union] to injure the plaintiffs or to coerce them into joining its union or unions, although I am satisfied that the legal effect of the contract may deprive the plaintiffs of employment by the transatlantic steamship lines," and ruled as matter of law that the bill could not be maintained and entered a decree dismissing it. The plaintiffs' appeal brings the case here.

It is familiar law that the findings of fact made by a single justice are not to be set aside unless plainly wrong. There was testimony from witnesses from both groups of defendants that their purpose in entering into the contract was not to harm the plaintiffs, but primarily to secure the welfare of each party to it. The steamship agents testified that they previously had dealt with several different organizations or local unions; that the committees representing these bodies were cumbersome in numbers, not small enough to make an effective body, and in consequence, in case of disagreement as to working conditions, there was difficulty in getting an adjustment; and that work was not done expeditiously and well, and it was felt that if an agreement was made with one strong union, under good control and management, it would be easier to get an adequate supply of labor and to settle troubles that might arise; and that no coercion or intimidation was exercised over them by the defendant union, and that they acted voluntarily with a view singly to their own interests in signing

the contract. The advantage to the defendant union lay in securing a permanent arrangement covering all labor conditions, with preference in employment for their own members. The uncontradicted direct testimony was to the effect that the dominant motive on the part of both parties was to gain benefits for themselves and in no sense to harm the plaintiffs. Of course the defendants must be presumed to have intended the natural results of their acts, whatever may have been their oral statement respecting their intention. But it is plain from this summary of testimony that the finding that there was no purpose to injure the plaintiffs or to compel them to join the defendant union was supported by evidence. The tortious acts and motives which frequently have been found to exist in cases involving industrial disputes are absent in the case at bar. There has been no violence, threat or intimidation.

The question remains whether upon the facts found the plaintiffs are entitled to relief. There is no allegation or proof of coercion or violence direct or indirect toward the plaintiffs, or that the plaintiffs or any of them have been discharged from employment as a result of the contract. It is uncontroverted that the employment of longshoremen is occasional, work being offered only upon the arrival and departure of vessels. The plaintiffs' complaint is that, having no present contract, there is likelihood that in the future they will not be able to secure employment to the same extent as formerly from the transatlantic steamship lines by reason of this contract. This is a simple case where employers and a union of employees have made an agreement freely and without any kind of constraint, the terms of which do not require the breaking of contractual relations with any one, to the end that all the work of a specified kind be given to the members of a union so far as they are able to do it, for a limited period of time. If a sufficient number of union men are not supplied, the employer may hire whom he chooses. For aught that appears, the contract may have followed competition between rival groups of workmen to secure the work.

The inducements which moved both parties to the making of the contract were those ordinarily accompanying the kind of competition which is within the bounds of law. There was no fraud, intimidation, molestation, threat or coercion, covert or open, acting either upon the body or mind or property interests of the contracting parties. The incitements to the contract were those of business advantage alone. The terms of the contract do not preclude the employers from procuring workmen from any source if the defendant union does not supply them constantly with a sufficient number of competent longshoremen. But on the contrary, they are given this right expressly. The explicit finding of the single justice was to the effect that a desire or intention to harm the plaintiffs by depriving them of the chance of work, or to compel them to join the defendant union, or to do them any other injury, was not a part of the design of the contract nor one of the influences operating upon the minds of the parties in executing it. Whatever loss may come to them is an incidental result and not an essential element of a contract, whose dominant purpose is within the limits of lawful bargaining. No economic pressure, threat of business loss, or interference with absolute freedom of action was exercised in order to procure the making of the contract. There was nothing of the boycott about the contract, for an essential element of the boycott is intentional injury to somebody. An agreement of this sort under the circumstances disclosed is within the protection of *Pickett* v. *Walsh*, 192 Mass. 572, 584. It is within the lawful principles as to the conduct of business expounded at length

and with great clearness in *Martell* v. *White*, 185 Mass. 255. See also *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598; *S. C.* on appeal, [1892] A. C. 25. See in this connection, *Commonwealth* v. *Strauss*, 188 Mass. 229; *S. C.* 191 Mass. 545. Those principles are the law of this Commonwealth. It is not necessary to repeat or restate them. They are decisive against the contentions of the plaintiffs. There is nothing inconsistent or inharmonious with this conclusion, either in the facts or the principles declared in the numerous decisions by this court involving so called labor disputes, which are collected in *Minasian* v. *Osborne*, 210 Mass. 250, at 255. The principles on which those cases were decided are reaffirmed now but they do not reach to the facts of the case at bar as found by the single justice. See also *Quinn* v. *Leathem*, [1901] A. C. 495; *South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905] A. C. 239; *Bowen* v. *Matheson*, 14 Allen, 499. The facts in the case at bar are different from those presented in *Berry* v. *Donovan*, 188 Mass. 353, where the direct result of the contract between the defendant and the plaintiff's employer was that the plaintiff was discharged. For the same reason, among others, *DeMinico* v. *Craig*, 207 Mass. 593, and *Hanson* v. *Innis*, 211 Mass. 301, are to be distinguished. There was no strike or other compulsion to procure a closed shop, conduct which has been held illegal. As was said by Knowlton, C.J., in *Folsom* v. *Lewis*, 208 Mass. 336, at 338: "Strengthening the forces of a labor union, to put it in a better condition to enforce its claims in controversies that may afterwards arise with employers, is not enough to justify an attack upon the business of an employer by inducing his employees to strike." *Berry* v. *Donovan*, 188 Mass. 353. *Plant* v. *Woods*, 176 Mass. 492. *Pickett* v. *Walsh*, 192 Mass. 572, 582. *Reynolds* v. *Davis*, 198 Mass. 294, 302. *McCord* v. *Thompson-Starrett Co.* 129 App. Div. (N. Y.) 130, affirmed in 198 N. Y. 587. *Brennan* v. *United Hatters of North America*, 44 Vroom, 729. But a different situation is presented by a voluntary and unforced agreement, freely made solely for the mutual advantage of the contracting parties, which does not effect the discharge from employment of any one. There are decisions in other jurisdictions to the precise point in harmony with the conclusion here reached. *Jacobs* v. *Cohen*, 183 N. Y. 207. *Kissam* v. *United States Printing Co.* 199 N. Y. 76. *National Fire Proofing Co.* v. *Mason Builders' Association*, 94 C. C. A. 535. See *State* v. *Toole*, 26 Mont. 22, 33.

Although there is evidence which would warrant a finding that the defendant union represents "practically the whole of the longshoremen of the port" of Boston, this has not been found as a fact. It is apparent both from the frame of the bill, the trend of the trial as disclosed on the record, and the findings of the single justice, that the hearing did not proceed upon the theory of an unlawful monopoly or a violation of the Sherman anti-trust act. Those issues were not tried. Such questions cannot be raised at this stage of the case and they are not passed upon. Hence, it is not necessary to consider St. 1911, c. 503, *Connors* v. *Connolly*, 86 Conn. 641, 651, *Loewe* v. *Lawlor*, 208 U. S. 274, 293, and *United Shoe Machinery Co.* v. *La Chapelle*, 212 Mass. 467, upon which the plaintiffs now seek to rely. See also *Russell* v. *Amalgamated Society of Carpenters & Joiners*, [1910] 1 K. B. 506; *S. C.* [1912] A. C. 421.

Decree dismissing bill affirmed.

Fred G. Burnham *et al. v.* Edward F. Dowd *et als.*

Hampden. February 24, 1914–March 31, 1914.

217 Mass. 351.

Equity Pleading and Practice, Master's report: rulings on evidence, motion to recommit — *Labor Union — Equity Jurisdiction*, To enjoin unlawful interference with business, Damages — *Boycott — Damages*, In equity.

On a motion in a suit in equity to recommit a master's report based on rulings of the master admitting evidence at the hearing before him, if it appears that the evidence thus objected to was admitted at the hearing before the master without objection and that no motion was made before the master to strike out this evidence, the motion to recommit is addressed merely to the discretion of the trial judge, and where, as in the present case, there is no reason to suppose that his discretion was exercised wrongly, a denial of the motion by him is final.

A dealer in masons' supplies may maintain a suit in equity against the members of a labor union, who are bound by their rules and votes not to use or work upon any material purchased from dealers declared by the union to be "unfair," to enjoin the defendants from declaring the plaintiff to be "unfair" because he continued to furnish masons' supplies to a building contractor declared by the union to be "unfair;" such action against the plaintiff being in intention and effect a boycott.

A boycott declared by the members of a labor union against a dealer in masons' supplies, who also maintains other branches of his business, is none the less an unjustifiable interference with his business because it is aimed at only one branch of it.

In a suit in equity by a dealer in masons' supplies against the members of a labor union, who are bound by their rules and votes not to use or work upon any material purchased from dealers declared by the union to be "unfair," to enjoin the defendants from declaring the plaintiff to be "unfair" because he continued to furnish masons' supplies to a building contractor declared by the union to be "unfair," where the plaintiff is held to be entitled to an injunction, he also may be awarded damages if it is plain that he has sustained substantial damage, although it may be impossible to determine the total amount of the plaintiff's loss and it may be difficult to ascertain with absolute certainty the money value of even the damages that are capable of proof.

Bill in equity, filed in the Superior Court on February 19, 1913, by the members of a partnership engaged in the business of dealing in flour, grain, hay and masons' supplies at Holyoke, against the officers and members of an unincorporated association called the Bricklayers' and Plasterers' Union, Number Two of Holyoke, to enjoin the defendants from keeping the names of the plaintiffs on the "unfair list" of the union, from threatening to strike or to leave the employ of any owner, builder or contractor because of the purchase of masons' supplies by such persons from the plaintiffs or of having had other dealings with the plaintiffs, and from ordering or inducing any strike against any owner, builder or contractor for such reason; and praying also for damages and for further relief.

The case was referred to Wallace R. Heady, Esquire, as master. The essential facts found by him are stated in the opinion. The master found that the actual net loss to the plaintiffs, which at the time of the filing of the bill had resulted from the acts of the defendants set out in the master's report, amounted to the sum of $500.

Later the case was heard by *Dubuque*, J., upon the defendants' exceptions to the master's report and upon a motion of the defendants to recommit the master's report for the reason that the master had not set forth in his report the rulings made by him as to the admission of evidence upon which the defendants' exceptions were based and

so much of the evidence as was necessary to bring such questions of law intelligently before the court. The judge denied the motion of the defendants to recommit the report. He overruled the defendants' exceptions and ordered that the master's report be confirmed. At the request of both parties the judge reserved the case for determination by this court.

The case was submitted on briefs.

J. B. Carroll, W. H. McClintock & J. F. Jennings, for the defendants.

N. P. Avery, for the plaintiffs.

SHELDON, J. If it appeared from this record that the defendants' exceptions to the admission of evidence by the master had been taken at the hearing before the master, and that the objections made to the report by the defendants upon this ground and the exceptions filed by them in pursuance thereof had thus been based upon a proper foundation, it would not have been easy to justify the refusal to recommit the master's report in order that the rulings made upon these points and excepted to by the defendants might be reviewed. But this is not the case. So far as appears, all the evidence to the admission of which objection afterwards was made was received originally without any objection. Nor does it appear that a motion afterwards was made to strike out any part of this evidence, if that would have been sufficient. Undoubtedly, if seasonable objections had been made by the defendants and had been overruled by the master, and this fact had been shown to the Superior Court, the motion to recommit would have been granted. As the case stands, the motion was addressed merely to the discretion of the judge who heard it, and there is no reason to suppose that his discretion was exercised wrongly. *Cook* v. *Scheffreen*, 215 Mass. 444, 447. *Lee* v. *Methodist Episcopal Church*, 193 Mass. 47.

We see no ground on which any of the exceptions to the master's report can be sustained. Most of them relate to findings of fact, as to which the evidence is not before us. Others refer to the admission of evidence, and cannot be considered for the reasons already stated. The defendants have not argued separately any of these exceptions, although they have not been waived, and accordingly each one of them has been considered. But it is not necessary to discuss them in detail.

The leading material facts found by the master may be summarized as follows: The plaintiffs carry on a business which includes the selling at wholesale and retail of masons' supplies. The defendants are members of a voluntary unincorporated association or labor union in Holyoke, hereinafter called the union. It is the object and purpose of all the members of this union to make themselves and the union as powerful as possible in Holyoke and its immediate environment, and to exert their power for the purpose of bettering the labor conditions of members of the union, especially with reference to rates of wages and periods of labor. It is a part of their principles which all the members of the union are under obligation to respect and uphold, that all men of their craft or trade working in Holyoke or its immediate vicinity, that is, within the jurisdiction of their union, must be members thereof; that all their members should refuse to work with men of their craft who were not members of the union or had not declared their intention to join it; should refuse to work for employers who were declared "unfair" by the union; and should refuse to use in their work any materials that had been sold or furnished by any merchant who was declared unfair by the union. They aimed to accomplish their purpose, of bettering the labor conditions of

their members, primarily by persuasion coupled with the fear of consequences if the party addressed should not yield, and secondarily, if necessary, by troubles and loss to the business of contractors or merchants. This union was connected with the Building Trades Council of Holyoke, which represented the various building trades unions (some fourteen in number) of Holyoke and vicinity, and was composed of delegates sent from these unions. In July, 1911, one Gauthier employed non-union masons in certain construction work in Holyoke, against the protest of this union; and the plaintiffs furnished to him masons' materials. In August, 1911, the union voted to refuse to handle any building material of any firm that furnished stock to Gauthier or to any "unfair" contractor. Soon after this, the delegates from the union to the Building Trades Council reported these facts to that body; and the agent of the council sent a written notice to the plaintiffs that Gauthier was "doing work contrary to laws of Building Trades Council," and was "therefore recognized by us as being 'unfair,'" and expressing the hope of "co-operation in this matter." The plaintiffs continued to furnish material to Gauthier. Thereupon, by successive votes, the union declared that the plaintiffs were "unfair." This was for the reason that the plaintiffs continued to furnish masons' supplies to Gauthier, and refused to promise not to sell to any party who should not be in good standing with the union. All the members of the union would have refused since August, 1911, and would refuse now and in the future (so long as the plaintiffs were held by the union to be unfair) to work with materials purchased from the plaintiffs. It has not been and in the future it will not be practicable, without the labor of members of the union, to perform building contracts of any size or importance in Holyoke or its immediate vicinity, without serious inconvenience, trouble and loss to the contractors, and the defendants have intended that owners and contractors should fear this result if they purchased masons' supplies from the plaintiffs. The union and its officers and members, including some of the defendants, have notified various owners and contractors, who either were buying or were intending to buy masons' supplies from the plaintiffs for construction work upon which members of the union necessarily were employed, that the plaintiffs were upon the "unfair" list of the union, and that its members would not use or work upon material furnished by the plaintiffs, and in substance threatened to strike if masons' supplies were purchased from the plaintiffs. These contractors and owners feared, and it was intended that they should fear and they were justified in fearing, that these threats would be carried out; and in consequence thereof they ceased or refrained from buying supplies of the plaintiffs, as otherwise they would have done, and the plaintiffs' sales of masons' supplies were considerably diminished and their profits lessened in consequence of these facts. This state of affairs will continue, to the serious loss and damages of the plaintiffs, unless they shall promise not to sell to any one considered unfair by the union.

The defendants did not act from actual personal malice toward the plaintiffs; but their acts were done in pursuance of their union principles and purposes, as above stated, and without caring for the injurious consequences to the plaintiffs. Indeed these injurious consequences were anticipated and contemplated by the defendants. They did not attempt to declare or enforce any boycott against the plaintiffs, except as this is included in the acts that have been mentioned. During the period involved in this case, some of the defendants have bought for their own use small quantities

of masons' supplies from the plaintiffs, and others of the defendants during the same time have made purchases from the plaintiffs in other branches of the plaintiffs' business.

Although there has been a little contrariety of decisions in other jurisdictions, we do not consider that there is any doubt as to the rule of law to be applied in this case. The defendants have no real trade dispute with the plaintiffs. No one of the members of the union is, or so far as appears ever has been, employed by the plaintiffs. The plaintiffs have not interfered or sought to interfere with the employment of any of those members, or with the rates of pay, the periods of labor, or any of the conditions of such employment. There is no competition between these parties, as there was in *Bowen* v. *Matheson*, 14 Allen, 499. The matter that lies at the foundation of these proceedings is a dispute between the union and Gauthier. He employs or has employed non-union labor; the defendants (including under this term all the members of the union) object to this. They have a right to say that they will do no work for him unless he will give to them all the work of their trade, that they will do all or none of his work. That was settled by our decision in *Pickett* v. *Walsh*, 192 Mass. 572. If they were employed by Gauthier, and if he employed also non-union men of their craft, they would have a right, unless they were bound by some term of their contract of employment, to strike unless all of this work should be given to them or to their associates. But it was pointed out in the same case that not all strikes are lawful; and it now is settled in this Commonwealth that it is a question of law whether any particular strike is a lawful one. *Reynolds* v. *Davis*, 198 Mass. 294. *DeMinico* v. *Craig*, 207 Mass. 593. But the second point decided in *Pickett* v. *Walsh*, *ubi supra*, is in our opinion decisive of the principal question raised in this case. It was there held that the members of a labor union who are employed by a contractor to do work upon a building, and who have no dispute with that contractor as to work which they or their fellows are doing for him, cannot lawfully strike against him for the mere reason that he is doing work and employing some of their fellows upon another building upon which non-union men are employed to do like work, not by him, but by the owner of that building. The language and reasoning of that decision are applicable here. The reason of the decision was that, as the court said (Loring, J., 192 Mass., page 587), such a strike "has an element in it like that in a sympathetic strike, in a boycott and in a blacklisting, namely: It is a refusal to work for A, with whom the strikers have no dispute, because A works for B, with whom the strikers have a dispute, for the purpose of forcing A to force B to yield to the strikers' demands." So in the case at bar, the threat of the defendants was to strike against owners and contractors, with whom the defendants had no dispute, for the purpose of forcing those owners and contractors to refuse to buy masons' supplies from the plaintiffs, and thus by the loss of business and of the profits to be derived therefrom, force the plaintiffs to refuse to sell to Gauthier or others whom the defendants might call unfair, and thus put a pressure upon those persons which should force them to cease employing non-union masons and to give all their mason work to the defendants. This was a step further than what was held in *Pickett* v. *Walsh* to be an unlawful combination for an unjustifiable interference with another's business. It was in intention and effect a boycott; and it was none the less so because it was aimed at only one branch of the plaintiffs' business. There is no more right to interfere with one branch of a merchant's business, to obstruct it and lessen its profits,

and so far as may be done to destroy it entirely, than there is so to interfere with, obstruct and destroy the whole of that business. The difference is merely one of degree, not of kind. And *Pickett* v. *Walsh* is well supported as to this point both upon the reasoning of the opinion and by authority. See the cases collected on page 588. It has been cited and followed in our later decisions. *Reynolds* v. *Davis*, 198 Mass. 294. *M. Steinert & Sons Co.* v. *Tagen*, 207 Mass. 394. *Folsom* v. *Lewis*, 208 Mass. 336. *Hanson* v. *Innis*, 211 Mass. 301. Most of the decisions in other jurisdictions, besides those cited in *Pickett* v. *Walsh*, are to the same effect. *Aikens* v. *Wisconsin*, 195 U. S. 194. *Emack* v. *Kane*, 34 Fed. Rep. 46. *Shine* v. *Fox Bros. Manuf. Co.* 156 Fed. Rep. 357. *Rocky Mountain Bell Telephone Co.* v. *Montana Federation of Labor*, 156 Fed. Rep. 809. *American Federation of Labor* v. *Buck's Stove & Range Co.* 33 App. D. C. 83. *Gompers* v. *Buck's Stove & Range Co.* 33 App. D. C. 516. *Doremus* v. *Hennessy*, 176 Ill. 608. *Kemp* v. *Amalgamated Association of Street & Electric Railway Employees*, 153 Ill. App. 344. *Perkins* v. *Pendleton*, 90 Maine, 166. *Lucke* v. *Clothing Cutters & Trimmers' Assembly*, 77 Md. 396. *Newton Co.* v. *Erickson*, 70 Misc. (N. Y.) 291. *State* v. *Huegin*, 110 Wis. 189, 249, *et seq.*

As was said in *Hopkins* v. *Oxley Stave Co.* 83 Fed. Rep. 912, 917: "Persons engaged in any service have the power, with which a court of equity will not interfere by injunction, to abandon that service, either singly or in a body, if the wages paid or the conditions of employment are not satisfactory; but they have no right to dictate to an employer what kind of implements he shall use, or whom he shall employ."

We have examined with care all the decisions that have been referred to by the defendants. Some of them turn upon a different state of facts from that which here is presented. Some of them we should hesitate to follow to the conclusions toward which they logically tend. But the result which we have reached seems to us to be in accord with sound reason and supported by authority.

The defendants contend earnestly that each one of them has a perfect right to refrain from dealing himself, and to advise his friends and associates to refrain from dealing, with the plaintiffs, and that they have a right to do together and in concert what each one of them lawfully may do by himself. But that is not always so. It is especially true in dealing with such questions as these that the mere force of numbers may create a difference not only of degree, but also of kind. No doubt the defendants' organization is a lawful one, and certainly some of the objects aimed at by the union thus formed are both legal and of high utility. But, as was pointed out by the Supreme Court of the United States in *Gompers* v. *Buck's Stove & Range Co.* 221 U. S. 418, 439, "the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made it is the duty of government to protect the one against the many as well as the many against the one." To the same effect is what was said by this court, through Mr. Justice Hammond, in *Martell* v. *White*, 185 Mass. 255, 260, quoting the words of Lord Justice Bowen in *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 616: "Of the general proposition, that certain kinds of conduct not criminal in any one indi-

vidual may become criminal if done by combination among several, there can be no doubt." So in *Pickett* v. *Walsh*, 192 Mass. 572, it was held among other things that what is lawful if done by an individual may become unlawful if done by a "combination of individuals." And see the cases collected on page 582 of that opinion. This principle is peculiarly applicable to cases like the one at bar. There is no such thing in our modern civilization as an independent man. No single individual could continue even to exist, much less to enjoy any of the comforts and satisfactions of life, without the society, sympathy and support of at least some of those among whom his lot is cast. Every individual has the right to enjoy these, and is bound not to interfere with the enjoyment of them by others. That right indeed is usually one of merely moral obligation, incapable of enforcement by the courts, but it is none the less an actual wrong for any body of men actively to cause the infringement of that right in definite particulars; and especially where such an infringement is made possible only by the concerted action of many in combination against one, and results in direct injury to his business or property, the courts should interfere for the protection of that person.

In *Worthington* v. *Waring*, 157 Mass. 421, where the court refused to enjoin the defendants from putting the names of the plaintiffs upon a black list and thus making it impossible for them to obtain in that neighborhood employment in their trade, there was a misjoinder of plaintiffs. Apart from this technical difficulty, the decision was put upon the ground that while courts of equity may protect property from threatened injury when the property rights are equitable or when they cannot be protected adequately at law, yet equity has in general no jurisdiction to restrain the commission of crime or to assess damages for torts already committed, and the rights there alleged to have been violated were said to be merely personal rights and not rights of property. That case is not applicable here, for the rights now in question are distinctly property rights. Accordingly we need not consider whether the doctrine of that case can be reconciled with our later decisions, or whether it now would be followed if the same state of facts were again presented.

The question of damages remains to be dealt with. Upon that we find no error in the master's report. That the plaintiffs have sustained substantial damage is manifest; and the mere facts that it may be impossible to determine the total amount of their loss, and that it may be difficult to ascertain with absolute certainty the money value of even the damages that can be proved, is no reason for refusing to allow to the plaintiff what has been found to be capable of substantial proof. *Fox* v. *Harding*, 7 Cush. 516. *Speirs* v. *Union Drop Forge Co.* 180 Mass. 87. *C. W. Hunt Co.* v. *Boston Elevated Railway*, 199 Mass. 220, 235, *et seq.* *De Minico* v. *Craig*, 207 Mass. 593, 600. We find nothing inconsistent with this in *Todd* v. *Keene*, 167 Mass. 157, *John Hetherington & Sons* v. *William Firth Co.* 210 Mass. 8, 23, *et seq.*, or the other cases relied on by the defendants. Doubtless merely speculative damages or any damages that have not been proved cannot be recovered; but this does not require absolute mathematical demonstration or prevent the drawing of reasonable inferences from the facts and circumstances in evidence.

The result is that the plaintiffs are entitled to a decree enjoining the defendants from keeping the names of the plaintiffs upon their unfair list, from threatening to strike or to leave the work of any owner, builder or contractor by reason of such persons

having purchased masons' supplies from the plaintiffs or having dealt otherwise with the plaintiffs, and from ordering or inducing any strike against an owner, builder or contractor for such reason, and that the plaintiffs shall recover from the defendants the sum of $500 with interest from the date of the filing of the master's report, and their costs of suit, and have execution therefor. *So ordered.*

New England Cement Gun Company *v.* Edward J. McGivern *et als.*

Suffolk. January 26, 1914–May 26, 1914.

218 Mass. 198.

Labor Union — Unlawful Interference — Damages, In suit in equity.

If, in a suit in equity by a corporation, which was the exclusive licensee in a certain territory authorized to operate a machine for projecting through a hose a mixture of cement, sand and water called "gunite" upon walls, against the officers of a labor union, organized to unite all practical journeymen plasterers working within its locality "for the purpose of securing united action in whatever may be regarded as beneficial to their united interest," it appears that the defendants, in order to compel the plaintiff to employ only union men for operating the hose and "truing up" the work on all jobs where it used the machine, conspired together for the purpose of creating and enforcing a boycott against the plaintiff and of hindering and interfering with the prosecution of its business unless it should accede to their demands, sought out persons proposing to make contracts with it and coerced them into not doing so, caused the rescission of such contracts as they discovered had been made with the plaintiff, and, by means of a strike, compelled a certain contractor in charge of the plastering of a certain building, with whom they had no trade dispute, to compel the general contractor to compel the owner to compel the plaintiff to give them the work they demanded, an injunction will be issued restraining the defendants from causing or taking part in any boycott against the plaintiff's business by coercing others, through intimidation or threats, to withdraw from the plaintiff their beneficial business intercourse, and from causing or inciting any sympathetic strike against the plaintiff or its customers for the purpose of preventing the use by the plaintiff of its machinery and process of applying gunite or for the purpose of compelling it to discharge any of its non-union workmen.

In the same suit, a master found that, because of the acts of the defendants and in response to a letter from the owner of the building, the plaintiff assented to a cancellation of its contract, and that, "as a practical matter it was impossible for the plaintiff to hold its contract and impossible for the owner to allow the plaintiff to perform it, and the result of the action of the defendants was to destroy its value," and he further found that the profit which the plaintiff would have made if allowed to perform the contract was $890. The case being reserved for determination by this court, it was *held*, that, while the plaintiff was entitled to damages caused to its business by the unlawful acts of the defendants, the findings of the master were not sufficient to warrant an assessment of damages without a further hearing.

Bill in equity, filed in the Supreme Judicial Court on May 29, 1913, against "Edward J. McGivern . . . individually and as an officer and member of a voluntary unincorporated association, to wit, The Operative Plasterers' International Association of the United States and Canada; and William C. Cumming, William J. Taylor, William C. Keating, and said Edward J. McGivern, individually and as officers and members of a voluntary unincorporated association, to wit, Union No. 10, Boston Branch, Operative Plasterers' International Association of the United States and Canada, and all other members of said Union No. 10, Boston Branch, most of whom are to the plaintiff unknown, and who are too numerous to be individually named as defendants in these proceedings." The bill sought to enjoin the defendants from interfering unlawfully with the plaintiff's business and for damages.

New England Cement Gun Co. *v.* McGivern.

The suit was referred to Clarence H. Cooper, Esquire, as master. The material facts found by him are stated in the opinion. The case was reserved by *Sheldon*, J., for determination by the full court.

W. M. Noble, for the plaintiff.

E. F. McClennen, (*A. L. Fish* with him,) for the defendants.

De Courcy, J. No exceptions were taken to the report of the master; and among the facts found by him are the following: The plaintiff is the exclusive licensee in New England of certain patented machinery and processes by which sand, cement and water are simultaneously mixed and projected upon the walls of buildings and other structures. The apparatus, which is called a cement gun, consists of a portable metal barrel with chambers and valves, in which dry cement and sand are mixed, divided into units of quantity, and then by means of an air compressor driven out of the gun and through a hose to the nozzle. A second hose conveys water into a chamber of this nozzle, and the elements are converted into a mixture or plaster called gunite, which is instantly ejected from the nozzle upon the surface to be covered. The apparatus is operated by two men, the gun man and the nozzle man. The gun man controls the valves which regulate the flow of the mixture into and through the gun, the pressure of air within the chambers, and the rate of discharge of the mixture from the gun and through the hose to the nozzle. The nozzle man holds and operates the nozzle, has charge of the hose and controls the flow of the water. He must be skilled in determining the angle at which the plaster shall strike the surface; in judging and regulating the consistency, with respect to moisture, of the plaster which is being projected from the nozzle; and in determining the thickness and evenness of the coat of plaster which he is laying.

In a majority of cases it is necessary for the plaintiff to employ a skilled plasterer to follow the work of the gun and "true up" the surface of the cement. Operating the nozzle is very hard work, and it is the plaintiff's practice to have the nozzle man and the gun man interchange in their work at the end of each half day, for the purpose of resting each other; but if the nozzle man is a plasterer, then when the plasterer "truing up" the surface has learned the duties of nozzle man, the two plasterers can exchange places with the same result.

The defendants Cumming, Taylor and Keating are members of and respectively president, business agent and secretary of the Journeymen Plasterers' Benevolent Union of Boston, Mass., No. 10 of the International Association. McGivern is a member of the local union, and also president of the parent body, the Operative Plasterers' International Association of the United States and Canada, by which the local organization was chartered. The object of the local union as defined in its constitution, is "to unite together all the practical journeymen plasterers working within the jurisdiction of this union for the purpose of securing united action in whatever may be regarded as beneficial to their united interest." And the master specifically finds that "one of the main objects of the International Association and of Union No. 10 is to exercise a control by concerted action over the relations of practical plasterers and those who may, from time to time, require their services."

In the autumn of 1912, the plaintiff was plastering with its process the exterior of an apartment house in Boston, when the defendant McGivern told the plaintiff's superintendent that he would have to employ union plasterers to operate the nozzle,

or he (McGivern) would call a strike of the men working on the building; and for a time a union plasterer was so employed. On February 28, 1913, the plaintiff executed a written contract with the Old Colony Real Estate Trust to coat with gunite the exterior walls of a building which the Trust was erecting on Somerset and Howard Streets in Boston. While the preliminary negotiations were going on the defendant Taylor asked the plaintiff's vice-president, one Ambursen, if the plaintiff was going to employ union men on the job, and on being answered in the negative, told him that if the plaintiff did the outside work on the building it would have to do the inside work also. About this time Taylor called on one Farley, who was the acting trustee for the Old Colony Real Estate Trust, and said to him: "I understand you have got a contract with the New England Cement Gun Company. I would advise you not to go ahead and put that gunite on the building; if you do, there is liable to be trouble."

Early in April, when the interior plastering on the building in question was about one third done, the plasterers, all of whom were members of Union No. 10, left their work, and Taylor stated to Farley that unless he cancelled his contract with the plaintiff the plasterers would not return to their work. In order to induce them to return Farley, at Taylor's suggestion, wrote to one Caddigan, who was the general contractor on the building, notifying him that only union men should be employed in the work of covering the building with cement; and on the letter being given by Caddigan to Taylor the plasterers returned to work. A week later the union plasterers again left their work, and returned upon the assurance of Farley that none but union men would be employed on the outside of the building. Becoming suspicious of Farley's intentions, the union plasterers left their work a third time about ten days afterwards, the lathers and metal workers also leaving, and McGivern and Taylor refused to allow the plasterers to return to work until a contract had been made and exhibited to them, by which the builder had arranged for this outside work with Monahan, who had the contract for the inside plastering, and would employ union labor. Shortly before this the plaintiff's letter, later referred to, releasing the owner from its contract, had been sent to Farley, and by him shown to McGivern and Taylor.

It appears that Taylor, the business agent, was accustomed to make reports orally at the meetings of the Union. Their records, under date of April 16, 1913, contain the following: "B. A. made a report and the same was accepted as progressive. Moved no work be done on Monahan's job until the outside is started satisfactory to the business agent."

It does not appear that there is any dispute or contention between the plaintiff and its own employees, or that these employees are taking any part in the action of the defendants. The plaintiff's officers do not intentionally discriminate between union and non-union workmen, and were willing that their employees should join the defendant union. But, as the defendant McGivern informed them, this could not be done because the men were not plasterers; and he knew of no union to which they were eligible.

The master made certain specific findings and conclusions, among which are these.

"4. That there is a division of sentiment among members of the unions as to the use of the cement gun and process, the defendant McGivern and others being in favor of its use, and others in the majority being hostile to its use, based upon the fear that

it will reduce the work of practical plasterers; that the present attitude of the local union officials is that the union should control the operation of the nozzle of the gun, and not the rest of the machinery; that the demand of the defendants is that the plaintiff employ skilled plasterers only, who are members of the union, to operate the nozzle, as well as to follow after the nozzle in smoothing the surface covered; that the object of the defendants is to compel the plaintiff to unionize its business and to run a closed shop so far as the work of plastering goes, in order to secure all of that work for the members of their union under union conditions; and that it was to accomplish this object that the strikes were called on the job upon the Howard Street building.

"5. That the defendants have conspired together for the purpose of creating and enforcing a boycott against the plaintiff and of hindering and interfering with the prosecution of its business and of injuring the same unless it accedes to their demands.

"6. That the defendants, in pursuance of said conspiracy, are engaged in watching and seeking out work proposed to be given to the plaintiff and in coercing those in control thereof not to make with the plaintiff any contract for such work, and in causing the rescission of such contracts as they discover to have been made with the plaintiff."

"8. That the strikes were strikes against a subcontractor for the purpose of forcing him to coerce the main contractor to coerce the owner of the building to coerce the plaintiff to yield to the demands of the union.

"9. That the defendants have instituted a boycott against the plaintiff and intend to continue enforcing the same, unless prevented from so doing."

Without further recital of the details, it is apparent that the record discloses a combination on the part of the defendants to do acts which the law does not justify, notwithstanding that the ultimate motive by which they were inspired was to advance their own interests. The plaintiff had a written agreement with the owners of the building to apply the coating of gunite. Under our decisions it was unlawful for the defendants, by means of strikes and otherwise, intentionally to induce the owners to take away from the plaintiff its rights under that agreement. Such conduct is not legally allowable as so called trade competition or defense of self-interest. A combination to procure a breach of contract is an unlawful conspiracy at common law. *Berry* v. *Donovan*, 188 Mass. 353. *Folsom* v. *Lewis*, 208 Mass. 336. Further, if Monahan, who had the subcontract to do the interior plastering, also had the contract for this exterior work, his union workmen, unless prevented by their contract of employment, might have gone out on a strike unless he agreed to give all of the plastering work to them or their associates; because we assume that the application of stucco or cement to the exterior of a building may be found to be work such as practical plasterers have a right to compete for. But it was not lawful for them to strike to compel Monahan, with whom they had no trade dispute, to compel the general contractor to compel the owner to compel the plaintiff to give to the defendants the work they demanded. In other words, it was an unjustifiable interference with the plaintiff's business to injure others in order to compel them to coerce the plaintiff. Martin, Modern Law of Labor Unions, § 77 and cases cited. The acts of coercion and procuring breaches of contract mentioned in the sixth finding plainly are not justified by the law of this Commonwealth. It is unnecessary to consider further the unlawfulness of such a secondary or compound boycott in view of the full discussion of the subject in the recent opinions of

this court in *Pickett* v. *Walsh*, 192 Mass. 572, and *Burnham* v. *Dowd*, 217 Mass. 351, in which cases are collected the authorities in this and other jurisdictions.

The master finds that the International Association has not taken any action with respect to the use of the cement gun, and was not in any way concerned with the strikes referred to; and that the defendants McGivern and Taylor acted throughout as the agents and representatives of Union No. 10.

The plaintiff is entitled to a decree enjoining the defendants from causing or taking part in any boycott against the plaintiff's business, by coercing others, through intimidation or threats, to withdraw from the plaintiff their beneficial business intercourse; and from causing or inciting any sympathetic strike against the plaintiff or its customers for the purpose of preventing the use by the plaintiff of its machinery or process for applying gunite, or for the purpose of compelling it to discharge any of its non-union workmen; and to costs of suit.

As to damages. The only sum stated by the master is $890, which is the profit the plaintiff would have made if allowed to perform its contract with the Old Colony Real Estate Trust. It appears from the report that the plaintiff, in response to a letter from that Trust requesting a cancellation of the contract on account of the labor trouble, on April 9 wrote its assent thereto. As was said by HANEY, J., in *Chipley* v. *Atkinson*, 23 Fla. 206, 220: "My own termination of a contract, whether with or against the will of my employer, cannot constitute a breach of it by him or create a ground of action against him, or one who has unsuccessfully endeavored to induce him to break it." But while the plaintiff has precluded itself from recovering damages for the breach of the contract as such, it may recover the damages caused to its business by the unlawful acts of the defendants. And in determining the amount to which it may be entitled the master may take into account, as stated in his seventh specific finding,[1] that "as a practical matter, it was impossible for the plaintiff to hold its contract and impossible for the owner to allow the plaintiff to perform it, and the result of the action of the defendants was to destroy its value." It is to be borne in mind also that at the time of the correspondence referred to there was an understanding between the officers of the plaintiff and defendant companies that, if matters could be so adjusted that the work on the interior of the building would not be further interfered with, the contract for the exterior plastering would be re-awarded to the plaintiff. As the report now stands the court is not in a position to assess the damages, and the case must be recommitted for that purpose unless the plaintiff shall waive its claim therefor.

Ordered accordingly.

[1] The seventh specific finding was as follows: "7. That the plaintiff, by practical force of circumstances caused by the acts of the defendants, was obliged to cancel its contract with the Old Colony Real Estate Trust; that the work upon the building could not have been carried forward any further until the plaintiff's contract was cancelled and a contract made with another person; and that, as a practical matter, it was impossible for the plaintiff to hold its contract and impossible for the owner to allow the plaintiff to perform it, and the result of the action of the defendants was to destroy its value."

Attorney General *v.* Joseph Bedard *et als.*

Suffolk. May 18, 1914–June 17, 1914.

218 Mass. 378.

Charity — Trust — Attorney General — Equity Jurisdiction, For an accounting — *Labor Union — Strike.*

If, at the time of a strike of many thousands of operatives employed in a manufacturing centre, resulting in suffering and privation among them and their families, a committee, organized for the purpose of supporting the strike and also for the support of those strikers who were suffering and in want, appealed for funds for the relief of the strikers in want and received many thousands of dollars from many persons both in this Commonwealth and elsewhere who were moved by the appeal and by the suffering incident to the strike, and such committee expended a part of such money for purposes different from those for which it was contributed, such as salaries, board and personal expenses, legal expenses and counsel fees for some of their own number, transportation of children to other cities for the purpose of making further appeals, and contributions to a national organization of the strikers, it is the duty of the Attorney General, at the relation of some of the contributors, to enforce by an information in equity the application of the funds so raised to the charitable purposes for which they were contributed, and a demurrer to such an information, brought against the secretary, treasurer and other members of the committee, must be overruled.

Where a committee, organized for the purpose of supporting a strike of many thousands of operatives in a textile manufacturing centre and also for the support of those strikers who are in suffering and want, in response to an appeal issued by them for money with which to relieve such want, receives a large fund for that purpose, those members of such committee who become the custodians and managers of the fund are under the same obligation as to the fund as if they expressly had been made trustees thereof; they must account for it and can be credited in the accounting only with disbursements made for the purposes of the trust; they must be charged with everything for which they do not properly account; they are bound to keep the fund distinguished from other moneys in their hands, and the consequences of any failure on their part to keep it so distinguished must fall upon themselves.

If the custodians and managers of such fund deliver to the chairman of their committee, who is not a custodian or manager but who was present during a large part of the strike and was the secretary of a national organization of the strikers, checks on the funds in a bank which are payable to third persons and which he knows are to be used for other purposes than those for which the fund was given, and such member receives the checks and delivers them to the payees, who thereupon receive the amount thereof, he is jointly responsible with the custodians and managers for the amount of those checks.

Information in equity, filed on March 11, 1912, by the Attorney General at the relation of James M. Prendergast, Herbert S. Johnson and Robert A. Woods against Joseph Bedard, Joseph Shaheen, William D. Haywood, Joseph J. Ettor, William Yates, William Trautmann and the Lawrence Trust Company.

Allegations of the information were in substance as follows:

For many weeks the many thousand operatives employed in the textile mills at Lawrence had been on a strike and during that period, because of lack of wages, a large number of them had come to be in suffering and distress for want of proper food and clothing. The personal defendants were leaders of the strike, or members of a "strike committee," organized for the purpose of supporting the strike, and, among other things, of raising funds to be applied for the support of those strikers who were suffering and in want. The defendant Bedard was the secretary and the defendant Shaheen was the treasurer of the strike committee.

For the purpose of raising a fund to be applied for the relief of such strikers as were in want, the personal defendants made and issued appeals to the public generally for contributions to the committee or its executive officers, representing that the funds would be applied by the committee and officers to the support of such of the strikers and their families as were in need, suffering and want. An appeal widely circulated read as follows:

"No.

"Help your fellow workers who need bread and your support.

"Twenty-five thousand men, women and children, employed in the textile mills of Lawrence, mostly employees of the American Woolen Co. are out on strike against a reduction in wages that at best was only an average of five to six dollars a week.

"The textile industry, especially the wool portion that receives the highest protection, pays the lowest wage scale of any industry in America.

"Workers have dared to rebel against conditions that were unbearable. Because they have dared to assert their manhood and womanhood and determinedly insisted for an opportunity to live by their labor, hired military hessians have been sent to Lawrence to terrorize the workers into going back to work.

"We workers, who have done our utmost share to clothe the world, are now asking the world of labor and all those who sympathize with the cause of the workers for bread.

"Contribute liberally. It is our fight to-day, who knows, it may be you to-morrow who will need support.

"Issued by authority of the Textile Workers' Strike Committee.

Joseph Bedard, Secretary,
9 Mason Street,
Lawrence Mass.

Name Address Amount"

Many inhabitants of this Commonwealth and of other States, including the relators Prendergast and Johnson, being moved by such appeals and by sympathy for the poverty and suffering of the strikers and their families, and with a purpose and desire of aiding and benefiting such destitute persons, contributed for that purpose various sums of money amounting to many thousands of dollars, and delivered such sums to the defendant Bedard and to the other personal defendants to be held and used by them in trust to apply for the relief of the destitute and needy among the strikers and their families according to the tenor of the appeal above set out and other similar appeals. The defendant Lawrence Trust Company was the depositary of such funds. . . .[1]

The information further alleged a demand for an accounting and a failure to render an adequate accounting.

The prayers of the information were for temporary and permanent injunctions preventing the use of the fund for other purposes than those for which it was given, for a receiver to take charge of the fund, and "that an account be taken in relation to said trust fund and the amount thereof, and that an inquiry be made as to the extent of improper and illegal disbursements from said fund by the defendants, or any of them, or others controlling the same, and that the said defendants be made to account

[1] Certain portions of the statement of facts, being relatively unimportant for present purposes, have been omitted.

for and restore to said fund all sums improperly abstracted therefrom, and pay over to such receiver such amounts of said fund as shall have been found to have been wrongfully taken therefrom."

The personal defendants demurred. The demurrers were heard by *Morton*, J., and were overruled. The defendants appealed.

The case was referred to Winfield S. Slocum, Esquire, as master. He filed a report, and, upon a recommittal, a supplemental report. His findings as to the strike in Lawrence, the description of the personal defendants' official positions and the form of appeals for funds by the defendants were substantially in accordance with the allegations of the information. . . .[1]

A final decree was entered, declaring "that said defendants Bedard, Trautmann, and Shaheen are jointly and severally liable to account for the sum of $18,695.86, which was found by the master's report to have been paid out of strike funds for purposes other than relief, less the sum of $3,316.01 found to have been contributed for general purposes, leaving a balance of $15,379.85; also that said defendant Yates is liable to account for the sums of $2,800 and $3,000, paid out of strike funds and not accounted for, as found by the master;" and ordering "that the said defendants, Bedard, Trautmann, and Shaheen pay into the hands of the clerk of this court, to be held by him subject to the further order and direction of this court, said sum of $15,379.85, together with interest thereon from the date of the filing of the bill in this cause until fully paid; and that the defendant Yates pay into the hands of the clerk of this court, to be held by him, subject to the further order and direction of this court, said sum of $5,800, together with interest thereon from the date of the filing of the bill in this cause until fully paid; and that the plaintiff also recover his costs against said defendants Bedard, Yates, Trautmann, and Shaheen." The bill was dismissed as against the defendants Ettor and Haywood and the Lawrence Trust Company, with costs.

The defendants Yates, Bedard and Shaheen appealed.

The case was submitted on briefs.

J. F. Lynch, J. P. S. Mahoney & G. E. Roewer, Jr., for the defendants Yates, Bedard and Shaheen.

J. R. Dunbar, R. W. Dunbar & F. Leveroni, for the plaintiff.

SHELDON, J. The demurrer rightly was overruled. According to the averments of the bill, the fund in question was raised by subscriptions as a relief fund, to relieve the necessities of a very great number of men who had engaged in a strike, and who thus had been left without any means of maintaining themselves and their families. The fund was raised and should be applied for the purposes of a public charitable trust. *Jackson* v. *Phillips*, 14 Allen, 539, 556. *Attorney General* v. *Goodell*, 180 Mass. 538. *Attorney General* v. *Compton*, 1 Y. & C. Ch. 417. *Attorney General* v. *Kell*, 2 Beav. 575. It was upon the Attorney General that the duty rested of enforcing the proper application of the fund and of compelling the restitution of any part thereof which had been diverted to other purposes. R. L. c. 7, § 6. *Parker* v. *May*, 5 Cush. 336, 337. *Burbank* v. *Burbank*, 152 Mass. 254. *Attorney General* v. *Vivian*, 1 Russ. 226. *Attorney General* v. *Cockermouth Local Board*, L. R. 18 Eq. 172. *Strickland* v. *Weldon*, 28 Ch. D. 426. And see *McQuesten* v. *Attorney General*, 187 Mass. 185. And

[1] Certain portions of findings not essential to an understanding of the case have been omitted.

the occasion for the present application, the misappropriation of the fund by the defendants, is sufficiently averred. *Attorney General* v. *Parker*, 126 Mass. 216. *Attorney General* v. *Bishop of Manchester*, L. R. 3 Eq. 436.

The defendants' exceptions to the master's first report were waived, and those exceptions accordingly have been overruled by a decree from which no appeal has been taken.

The exceptions of the defendant Bedard to the master's supplemental report do not appear by the record before us to have been formally decided; but they really were disposed of by the action taken on the exceptions of the defendant Shaheen and by the final decree, which did not charge the defendants Bedard, Shaheen, Trautmann and Yates (hereinafter called the defendants) with any part of the sums contributed for general purposes. The failure to take formal action upon Bedard's exceptions is not material now, but it should be corrected.

The action taken on Shaheen's exceptions was sufficiently favorable to the defendants. The evidence heard by the master is not reported, and we cannot say that his findings were wrong. The defendants received the money in question as a trust fund. They must account for it, and can be credited only with disbursements which actually were made for proper purposes. They must be charged with everything for which they have not properly accounted. This is a sound principle, and is abundantly supported by authority. *Little* v. *Phipps*, 208 Mass. 331, 335. *Ashley* v. *Winkley*, 209 Mass. 509, 525. *Watson* v. *Thompson*, 12 R. I. 466, 470. *Blauvelt* v. *Ackerman*, 8 C. E. Green, 495, 502. *Frethey* v. *Durant*, 24 App. Div. (N. Y.) 58, 61. *Seaward* v. *Davis*, 133 App. Div. (N. Y.) 191. *Ward* v. *Armstrong*, 84 Ill. 151. *Chirurg* v. *Ames*, 138 Iowa, 697. It was for the defendants to keep the trust fund distinguished from other moneys in their hands; and the consequences of any failure on their part to comply with this duty must fall upon themselves. *International Trust Co.* v. *Boardman*, 149 Mass. 158, 163. *Snailham* v. *Isherwood*, 151 Mass. 317, 321. *Henderson* v. *Henderson*, 58 Ala. 582. *Lupton* v. *White*, 15 Ves. 432.

We cannot doubt that the defendants, the custodians and managers of this fund, are under the same obligations as if they expressly had been made the trustees thereof. *Attorney General* v. *Compton*, 1 Y. & C. Ch. 417, 426. *In re Hallett's estate*, 13 Ch. D. 696. *Dillon* v. *Connecticut Mutual Life Ins. Co.* 44 Md. 386.

The defendant Yates rightly is held for the amount which came to his hands. He took it without consideration, and must be taken to have had notice of the trust upon which it was held. *Otis* v. *Otis*, 167 Mass. 245. But as this is a part of the amount for which the other defendants have been held liable, the decree should be so modified as to make it plain that no double payment is required.

As there has been no appeal by the Attorney General, we cannot consider whether costs rightly were allowed to the defendants Ettor and Haywood.

What we have said disposes of all the material questions. It is not necessary now to determine what disposition finally shall be made of the money ordered to be paid into court.

The decree appealed from must be modified by inserting a statement that Bedard's first exception to the master's supplemental report is sustained and his second exception overruled; by ordering the payment into court of the sum of $5,800, with interest, by the defendants Bedard, Trautmann, Shaheen and Yates, and of the further sum

of $9,579.85, with interest, by the defendants Bedard, Trautmann and Shaheen; and by stating the amount of the costs ordered to be paid. So modified, the decree must be affirmed with costs against the defendants Yates, Bedard and Shaheen, being the only parties who have appealed from the decree. *So ordered.*

Edwin R. Fairbanks *et ali. v.* William C. McDonald *et als.*

Essex. November 4, 1914–November 24, 1914.

219 Mass. 291.

Equity Pleading and Practice, Inferences from facts reported by master, Decree — *Evidence*, Inferences — *Equity Jurisdiction*, To enjoin unlawful interference, Damages — *Labor Union*.

The power and duty of this court, when hearing a suit in equity on an appeal from a final decree, to draw inferences from facts found by a master or by a judge who heard the case cannot be disputed.

The officers and members of a labor union may maintain a suit in equity to enjoin the officers and members of another labor union from conduct intended to compel the plaintiffs' employers to discharge the plaintiffs and to refuse to give them any further employment, where it appears that the defendants acted, not for the purpose of securing for the members of their union all the work that was to be had from their employers, but to deprive the plaintiffs of employment and make it impossible for them to obtain their livelihood by their labor unless they should become members of the defendants' union upon whatever onerous terms that union should choose to impose.

In such a suit it is proper to award $500 assessed by a master as damages to one of the plaintiffs who, at the time of his discharge caused by the defendants, was sixty-five years of age, had worked for the employer for fourteen years and would still have been working for him if the defendants had not interfered, whose yearly wages for nine years preceding the hearing had been $562, and who at the time of the hearing had been out of employment for six weeks, the master stating that in making such assessment he had in mind the loss such plaintiff already had sustained and the prospect that his inability to secure work might extend over a substantial period of time. Under such findings of the master, however, the plaintiff was not given damages for the permanent loss of access to the labor market and was not barred from having further relief by way of injunction.

In a suit in equity by officers and members of one labor union against officers and members of another labor union to enjoin unlawful interference with the employment of the plaintiffs, where an injunction is ordered and nominal damages are given to some plaintiffs and substantial damages to another, the final decree should not order several judgments as to the damages for the several plaintiffs and a joint judgment for costs, but should order the defendants to pay to each plaintiff the amount found in his favor, and to pay the stated award of costs to all the plaintiffs jointly.

Bill in equity, filed in the Superior Court on February 24, 1914, by Edwin R. Fairbanks, Edward Willett and Edward A. Tasker, three officers and members of a voluntary unincorporated organization known as the Boot and Shoe Cutters Assembly, 3662, of the Knights of Labor, acting on behalf of themselves and of all other members of the Assembly, against certain officers of the Boot and Shoe Cutters Local, 62, of the United Shoe Workers of America, certain officers of the Joint Council of the United Shoe Workers of America, which is a national association, voluntary and unincorporated, with which Local, 62, is affiliated, and Fred A. Trafton, superintendent of the cutting department of one Sewall Clark, a shoe manufacturer doing business under the firm name of Williams, Clark and Company, the bill alleging that the defendants other than Trafton fairly represented the interests of the other members of Local, 62,

and of the United Shoe Workers of America, and that they were joined both as individuals and as representing such other members.

The suit was referred to James W. Santry, Esquire, as master.

The purpose of the bill, as stated by the master, was to restrain the defendants from interfering with the employment of the plaintiffs and of other members of Assembly, 3662, and also to have damages assessed by reason of an alleged unlawful interference with the employment of the plaintiffs, resulting in their discharge from the concern of Williams, Clark and Company, by whom they had been employed as shoe cutters.

The master found in substance that the defendants, except Trafton, were proper representatives of the interests of all other members of their respective organizations and that, with respect to the matters in issue, they acted within the scope of their powers as such representatives. Other findings were in substance as follows:

Assembly, 3662, at one time had been a large and powerful labor organization, comprising substantially all of the shoe cutters in Lynn. As a result of some internal trouble, many members severed their connection with it and became members of Local, 62, the membership of the assembly being reduced to eighteen. Local, 62, had a membership of about fourteen hundred.

On January 23, 1914, because of a grievance in the lasting department of Williams, Clark and Company, the members of the United Shoe Workers of America employed by that firm, including members of Local, 62, struck. The plaintiffs remained at work. After the immediate grievance was settled, the defendants refused to call off the strike because Local, 62, desired to have a price list pertaining to the cutting room adopted by the firm and it had been decided that this would be an opportune time to have this matter considered. The price list that was under consideration, besides naming in detail the prices that were to be charged for cutting the various parts of a shoe, also contained a stipulation, in substance, that all help needed should be employed through the office of Local, 62, and that no person, who for good reasons was objectionable to Local, 62, should be employed in the cutting room. There was a conference of persons representing the various interests of the defendants which lasted several hours, at which there was no discussion as to the matter of prices. At no time during negotiations for the settlement of this strike was there any serious difference between the parties as to prices. The matter that caused the greatest concern was the stipulation with reference to the employment and the retention of help and the effect that this would have upon the plaintiffs.

At the time of this conference, the plaintiffs were still in the employ of Williams, Clark and Company, and this fact was known to two of the defendants, Atwill and Gage, who were members of an investigating committee of the national organization of the defendants and who attended the conference, and they further knew that the plaintiffs had continued at work after the strike had been declared, and that they were not members of Local, 62. The plaintiffs were in every way satisfied with their work, one of them having been in the firm's employ for a period of about fourteen years. They were regarded by the defendant Trafton as competent and efficient workmen and he desired to retain their services, but, from the statements made by the two defendants referred to, and from their actions at the conference, he was reasonably impressed with the belief that, if he did so, the strike, which had not then been officially

declared settled, would be continued in force, although the grievance for which it originally had been called had been satisfactorily adjusted. He realized that any prolongation of the strike would cause loss and embarrassment to his employer, and this was a matter which he desired to avoid. The fact that the plaintiffs were in the employ of Williams, Clark and Company at the time of the submission of this price list was a very embarrassing feature, and for the purpose of eliminating it as much as possible from the situation, it was decided that the factory should be shut down on the day following the conference and that all workmen, including the plaintiffs, should be excluded from it. One purpose of such action was that it would result in a situation that would require the plaintiffs to become members of Local, 62, before they could be re-employed. The plaintiffs Tasker and Willett both made an effort to join Local, 62, but were prevented from doing so by reason of the amount of the fee, which is hereinafter discussed, that was imposed. Neither of them ever made formal application for reinstatement. The plaintiff Fairbanks never made any effort to join this Local.

The agreement proposed finally was signed. The strike then was called off and four days later all of the firm's employees except those in the cutting room returned to work. Four days later still the cutters returned, but, when the plaintiffs presented themselves for work, after some talk with the defendant Trafton as to whether they had seen the business agent of Local, 62, with reference to becoming members of Local, 62, they were not employed. Trafton would then have employed the plaintiffs had they been members of Local, 62, but he was prevented from doing so by reason of the agreement that he had signed. At the time he signed the agreement, he was influenced largely by the feeling that unless he did so the strike, which was then in progress, would be continued, with resultant loss and embarrassment to his employer, and this feeling on his part had a reasonable foundation, and was caused by the statements and actions of the defendants who were at the conference referred to.

There was great hostility on the part of the defendants as officers and members of Local, 62, and also as officers and members of the United Shoe Workers of America, toward the plaintiffs and toward other members of Assembly, 3662. When the plaintiffs, Tasker and Willett, sought reinstatement in the Local, a fee of $100 was imposed upon them, the officers of the Local knowing that they were seeking membership in Local, 62, in order to be reinstated in the employ of Williams, Clark and Company and having reasonable grounds for believing that they were in no financial condition to pay this sum. The fee was imposed for the purpose of punishing these men for their persistence in not becoming members of the United Shoe Workers of America.

By these methods, and by the manner in which these defendants have dealt with various employers, an impression reasonably had been created among employers that the employment of these plaintiffs or of other members of Assembly, 3662, might result in trouble and embarrassment to them, and for this reason the plaintiffs and all members of Assembly, 3662, were effectually excluded from employment in substantially all of the factories of Lynn.

On the question of damages, the master's findings were as follows: "It appeared that shortly after their discharge by Williams, Clark and Company, the plaintiffs Tasker and Willett obtained employment in Stoneham, and it did not appear that they had suffered any loss by reason of any diminution in their wages, and I therefore

find that if any damages should be assessed in their cases, the amount of the same should be nominal.

"In the case of the plaintiff Fairbanks, however, it appeared that he is a man of about sixty-five years of age, and up to the date of his discharge from Williams, Clark and Company, had been in the employ of that concern substantially for a period of fourteen years, and would now be working there had it not been for the interference of the defendants. At the time that the hearings in this case were in progress he had been out of employment for about six weeks. For the past nine years his average yearly wages have been $562.46. Having in mind the loss that he has already sustained, and the prospect that his inability to secure work may extend over a substantial period of time, it seemed to me, and I find, that he should be allowed the sum of $500 as damages."

An "order" was made confirming the master's report and a final decree was entered by order of *Hamilton*, J., dismissing the bill as against Trafton, enjoining the other defendants and the officers and members of the Local, 62, and the United Shoe Workers of America, "from interfering and from combining, conspiring or attempting to interfere with the employment of the plaintiffs" and of all members of the Boot and Shoe Cutters Assembly, 3662, Knights of Labor, "by representing or causing to be represented, in expressed or implied terms to any employer of said plaintiffs or of said members of said plaintiffs' association, or to any person or persons or corporation who might become employers of any of the said plaintiffs or of members of their said association, that such employers will suffer or are likely to suffer loss or trouble in their business from employing or continuing to employ said plaintiffs or any members of their said association; or by intimidating or attempting by threats, direct or indirect, expressed or implied, of loss or trouble in business, or otherwise, any person or persons or corporation who now are employing or may hereafter employ or desire to employ said plaintiffs or any members of the plaintiffs' said association; and from any and all acts, or the use of any methods, which by putting or attempting to put any person or persons or corporation in fear of loss or trouble, will tend to hinder, impede or obstruct the plaintiffs or any member or members of the plaintiffs' said association, from securing employment or continuing in employment." Other portions of the decree are described in the opinion.

The defendants, excepting Trafton, appealed.

The case was submitted on briefs.

E. C. Jacobs, E. J. Coughlin & R. W. Currier, for the defendants.

H. D. Linscott, for the plaintiffs.

Sheldon, J. In addition to the facts found by the master, we are clearly of opinion that it must be inferred from the facts reported by him that the defendants Atwill and Gage, acting for the members of their union, intended to compel the plaintiffs' employers to discharge the plaintiffs and to refuse to give to the plaintiffs any further employment; and that this was done, not for the purpose of securing for the members of the defendants' union all the work that was to be had from these employers, but to deprive the plaintiffs of employment and make it impossible for them to obtain their livelihood by their labor, unless they should become members of the defendants' union upon whatever onerous terms the latter should choose to impose. The power and duty of the court to draw further inferences from the facts found by a master or by a single

justice cannot be disputed. *American Circular Loom Co.* v. *Wilson*, 198 Mass. 182, 200. *Rosenberg* v. *Schraer*, 200 Mass. 218. *Knowles* v. *Knowles*, 205 Mass. 290, 294. *M. Steinert & Sons Co.* v. *Tagen*, 207 Mass. 394, 397. *Smith* v. *Kenney*, 213 Mass. 6.

The defendants did not say to their employers, "You must give us all your work or none of it," as they might have done without exceeding the limits of allowable competition. *Pickett* v. *Walsh*, 192 Mass. 572, 584. *Hoban* v. *Dempsey*, 217 Mass. 166. They required their employers to refuse absolutely to employ the plaintiffs, for the purpose of putting upon the latter an unfair pressure. In contemplation of law, they acted from malice towards the plaintiffs, and did to them an unlawful injury, by causing their exclusion from the labor market. *Berry* v. *Donovan*, 188 Mass. 353. *Pickett* v. *Walsh*, 192 Mass. 572, 588. *DeMinico* v. *Craig*, 207 Mass. 593. *Hanson* v. *Innis*, 211 Mass. 301.

This case resembles in principle *Burnham* v. *Dowd*, 217 Mass. 351, and much of the reasoning of that decision is applicable here.

In view of the decisions already cited, we think it manifest that relief from this continuing wrong can be given in equity. The main object of the bill is to protect the plaintiffs from the irreparable injury to which they are exposed by the unlawful acts of the defendants. It is only incidentally that the plaintiffs seek to recover damages for the losses already caused to them. Whether the rights that have been infringed did or did not come strictly under the definition of property rights, as we are inclined to think that they did, we do not consider that we ought to extend so far the doctrine of *Worthington* v. *Waring*, 157 Mass. 421, as to refuse relief in a case like this. The authority of that case upon this point has been doubted. *Burnham* v. *Dowd*, 217 Mass. 351, 359.

Substantial damages have been given only to the plaintiff Fairbanks. Upon the findings of the master we cannot say that he was not entitled to the sum allowed him. *Burnham* v. *Dowd*, 217 Mass. 351, 360, and cases cited. He has not however been given damages for the permanent loss of access to the labor market, and is not barred from having further relief by way of injunction.

It is too plain for discussion that neither one of the plaintiffs was required, before bringing this bill, to seek relief within the defendants' union or to exhaust any remedy that might there have been available.

The decree appealed from contains however some minor errors, which, although they have not been complained of by the defendants, yet ought to be corrected. Instead of ordering several judgments in favor of the respective plaintiffs for nominal or substantial damages, and a joint judgment for costs, the decree ought to order the defendants to pay to each plaintiff the amount found in his favor and to pay the stated amount of costs to all the plaintiffs jointly. So modified, the final decree appealed from must be affirmed, with the additional costs of the appeal.

So ordered.

JOHN CORNELLIER *v.* HAVERHILL SHOE MANUFACTURERS' ASSOCIATION *et als.*

SUFFOLK. SEPTEMBER 15, 1915.

221 Mass. 554.

Equity Pleading and Practice, Master's report — *Equity Jurisdiction*, To enjoin blacklisting, Plaintiff must come into court with clean hands — *Labor Union — Boycott*, By blacklisting — *Strike*.

[1] . . . A combination of manufacturers of a certain commodity to blacklist the striking employees of another manufacturer of the same commodity, when directed against persons with whom those combining have no trade dispute or when the concerted action coerces the members of the combination by implied threats or otherwise to withhold employment from those whom they otherwise would employ, is on the footing of a boycott and may be enjoined by a court of equity or may afford a ground for recovering damages in an action at law. Overruling anything to the contrary in *Worthington* v. *Waring*, 157 Mass. 421.

Discussion by DECOURCY, J., of the test of the legality of strikes and their relation to labor unions.

A suit in equity against certain shoe manufacturers in a certain city, to enjoin them from blacklisting the plaintiff because he took part in a strike against another shoe manufacturer in the same city, cannot be maintained, where it appears that before and for more than three months after the filing of the bill the plaintiff has been taking part in the strike against his employer conducted by unlawful means in which the plaintiff joined that reasonably caused the average employee to be apprehensive for his personal safety; because this unlawful conduct of the plaintiff and his associates precludes him from obtaining the active aid of a court of equity and leaves him to seek redress in an action at law for any damage that he has suffered by reason of the blacklisting.

BILL IN EQUITY, filed in the Supreme Judicial Court on January 25, 1913, against certain corporations and the members of certain partnerships engaged in the business of manufacturing shoes in Haverhill, to enjoin the defendants from interfering with the plaintiff's right to earn a livelihood, from the use of all black lists or other lists or devices containing the name of the plaintiff, for the assessment of damages and for further relief.

The case was referred to Arthur P. Hardy, Esquire, as master, "to hear the parties and their evidence, to find the facts, and report the same to the court." He filed a report in which he found the facts that are stated in the opinion. Exceptions to this report were filed by the plaintiff and also by the defendants.

The case was heard by *Loring*, J., who made an interlocutory decree sustaining certain of the defendants' exceptions, as stated in the opinion. The case then was recommitted to the master, who filed a supplemental report, and later was heard by *Loring*, J., upon the defendants' exceptions to the master's supplemental report.

The single justice reported the case for determination by this court as follows:

"This case came on to be heard before me on the exceptions taken by the defendants to the master's report.

"It appears from the master's report that on Thursday, December 12, 1912, the employees of the Witherell and Dobbins Company struck, after the increase in wages asked for by them had been granted, because that company refused to deal with the persons chosen by the employees to represent them in making the agreement for the increase in wages, which the company was ready to concede.

[1] The first paragraph of the headnote has been omitted.

"I am of opinion, and I rule, that a strike by union employees for the purpose of being represented in negotiations between them and their employer by the agents they have chosen to select for that purpose, viz., officers of the union, is a legal strike. In my opinion such a strike does not come within *Berry* v. *Donovan*, 188 Mass. 353, and *Plant* v. *Woods*, 176 Mass. 492.

"On the next day, Friday, December 13, 1912, the defendant employers of labor in the same city with the Witherell and Dobbins Company entered into a combination to resist that strike, which, as I have said, was a strike by employees for the purpose of being represented by union officials in their dealings with their employer.

"On Monday, December 30, 1912, a general strike was instituted by the employees of shoe shops in Haverhill (in addition to the employees of the Witherell and Dobbins Company) to aid the strike by the employees of the Witherell and Dobbins Company in carrying out the purpose for which they struck, namely, to be represented in dealings with their employer by the agents which they had chosen to select, namely, union officials.

"Referring (1) to the strike by the employees of the Witherell and Dobbins Company on December 12, and (2) to the general combination of the defendant employers of labor in shoe shops in Haverhill of December 13, and (3) to the general strike of December 30 by employees in Haverhill shoe shops, the master found 'that this was a struggle between the manufacturers, on the one hand, to deal with their employees as they saw fit without the intervention of the union, and the demand of the union, on the other hand, for recognition to the extent hereinbefore described; and both parties recognized it as such from the beginning.' The question to be decided is whether that struggle which in fact took place was a legal or an illegal struggle.

"I am of opinion, and I rule, that the purpose of the Witherell and Dobbins strike was not a purpose confined to the employees of the Witherell and Dobbins Company, or to the individual employer in that strike (the Witherell and Dobbins Company), but was (1) a purpose common to employees of other persons who might think it to be for their advantage to have employees, in dealing with their employer, represented by union officials; and (2) a purpose common to other employers who might think it to be for their advantage not to have employees, in dealings with the employer, represented by union officials.

"I therefore rule that the combination of the defendant employers to aid Witherell and Dobbins in resisting the strike of their employees by refusing to employ the striking employees of the Witherell and Dobbins Company was a legal combination, and not a boycott by way of a black list; and I also rule that the general strike by employees of shoe shops other than that of the Witherell and Dobbins Company was a legal strike, and not illegal within *Pickett* v. *Walsh*, 192 Mass. 572, as a sympathetic strike to aid in a trade dispute of a third person.

"If these rulings are correct, the plaintiff cannot complain of the defendants' refusing to employ him either before or after the general strike; the defendants were justified in refusing to give the plaintiff employment, because they had entered into a legal lockout as against the plaintiff.

"There is an additional reason why the plaintiff cannot recover for loss of employment after the general strike which began on December 30, 1912, and this reason would obtain even if the employers' combination of December 13 was an illegal one.

Cornellier *v.* Haverhill Shoe Manufacturers' Association.

An employee who is prevented from getting employment by an illegal black list of employers has two courses of action open to him. First, he can sue for any damages suffered by him, caused by the illegal combination of employers in blacklisting him, or, second, he can become a party to a general strike against all the employers who are parties to the black list. But he cannot do both. If he becomes a party to a general strike against all employers who are parties to the black list, he cannot complain that he is damaged by not being employed by the very persons for whom, by being a party to the general strike against them and others, he has refused to work.

"It is apparent that if my rulings are correct the bill should be dismissed, apart from the correctness or incorrectness of the defendants' exceptions to the master's report, and for that reason I have not considered them. But if these rulings of law are not correct, those exceptions should be considered.

"Under these circumstances I order that a decree be entered confirming the master's report and dismissing the bill of complaint, and I report the case for the consideration of the full court under R. L. c. 159, § 27, or § 29."

The case was argued at the bar in March, 1915, before *Rugg*, C.J., *Braley*, *DeCourcy*, *Pierce*, & *Carroll*, JJ., and afterwards was submitted on briefs to all the justices except Loring, J.

F. W. Mansfield, for the plaintiff.

J. J. Feely, (*R. Clapp* with him,) for the defendants.

DeCourcy, J. 1. The defendants filed eighty-five exceptions to the original report of the master. The sustaining of the forty-fourth and eighty-fifth rendered necessary a re-committal for the purpose of hearing further evidence. The supplemental report is a re-draft of the original one, with certain parts eliminated in consequence of the rulings of the single justice sustaining some of the exceptions, and with the additional findings made on the new evidence. To the supplemental report the defendants filed forty exceptions, and these have come before us without any action thereon by the single justice.

We have considered the large number of objections made and the arguments thereon, and have come to the conclusion that all of the exceptions to the original report, except those sustained by the single justice, and all of those taken to the supplemental report, must be overruled. It would serve no useful purpose to discuss them in detail. Those that deal with the admission and rejection of evidence disclose no reversible error. The findings of fact cannot be reviewed because the evidence has not been reported; and the facts found are relevant to the issues in the case, as clearly stated by the master when dealing with the several objections to his draft reports. The exceptions that relate to the master's refusal to pass upon requests for rulings of law cannot be sustained, because it was the master's duty to find the facts only, and not to rule upon their legal effect.

2. The basis of the plaintiff's complaint is that the defendants conspired against him, and by means of a black list procured his discharge from employment. On December 12, 1912, the plaintiff, with thirty-nine other employees of the Witherell and Dobbins Company, went out on strike. He secured employment at the factory of Charles K. Fox, Inc., on December 14, began work on December 16, at 7.10 A.M., and was discharged in a summary and unusual manner about two hours later. The master finds that the cause of his discharge was the fact that he was one of the striking em-

ployees of the Witherell and Dobbins Company, and that there existed a tacit understanding, to which the Fox Company was a party, that those striking employees should not be employed. It appears that on the day of the strike, or the day after, and at the request of the defendant Child (who was the manager of the Shoe Manufacturers' Association), Mr. Dobbins brought to a meeting of the manufacturers several lists containing the names of the employees who had gone on strike. Copies of the list were prepared and circulated by the defendants for the purpose of preventing the strikers from getting work in Haverhill and vicinity, and of forcing them to abandon the strike and return to work at the Witherell and Dobbins Company's factory against their will. The acts of the several defendants in furtherance of this combination need not be recited. The master specifically has found that Cornellier was discharged at Fox's because of this "black list." It may be said in passing that of the twenty defendants named in the bill the master finds that only the following (herein referred to as the defendants) were responsible for the acts complained of, namely, the Haverhill Shoe Manufacturers' Association, the Witherell and Dobbins Company, Gale Shoe Manufacturing Company, Charles K. Fox, Inc., Austin H. Perry, Ira J. Webster, Alwyn W. Greeley, Albert M. Child, George W. Dobbins and H. L. Webber.

Did this combination of the defendants to blacklist the striking employees of the Witherell and Dobbins Company, resulting in the discharge of and damage to the plaintiff, give him a legal cause of action? The statement of the general right of the Fox Company to terminate a workman's employment when and for what cause it chooses, where no right of contract is involved, does not carry us far. See *Coppage* v. *Kansas*, 236 U. S. 1. The same is true of the recognized equal rights of employers and employees to combine in associations or unions, so long as they employ lawful methods for the attainment of lawful purposes. See *Hoban* v. *Dempsey*, 217 Mass. 166. But it is settled that the intentional interference by even an individual, without lawful justification, with the plaintiff's right to have the benefit of his contract with his employer would be an actionable wrong. *Berry* v. *Donovan*, 188 Mass. 353. *Hanson* v. *Innis*, 211 Mass. 301. A combination to blacklist is the counter weapon to a combination to boycott, and is open to similar legal objections, when directed against persons with whom those combining have no trade dispute, or when the concerted action coerces the individual members, by implied threats or otherwise, to withhold employment from those whom ordinarily they would employ. See *New England Cement Gun Co.* v. *McGivern*, 218 Mass. 198, and cases cited.

It is true that in *Worthington* v. *Waring*, 157 Mass. 421, this court refused to enjoin the defendants from making use of a black list, stating that the rights alleged to be violated were personal and not property rights, and that there were no approved precedents in equity for issuing an injunction against the grievance there complained of. In the light of more recent decisions of the court recognizing that the right to labor and to its protection from unlawful interference is a constitutional as well as a common law right there appears to be no sound reason why it should not be adequately protected under our present broad equity powers. As intimated in *Burnham* v. *Dowd*, 217 Mass. 351, 359, the case of *Worthington* v. *Waring* cannot well be reconciled with our later decisions. It must be considered as no longer binding as an authority for the doctrine that equity will afford no injunctive relief against an unlawful combination to blacklist.

It should be added that St. 1914, c. 778, was enacted after the events in controversy and has not been considered. Nor, on the facts, have we had occasion to determine how far the "peaceful persuasion" statute (St. 1913, c. 690) permits one employer to advise another not to employ his striking employees. In several States legislation has been enacted to prevent blacklisting; and most of the decisions deal with the validity or construction of the different statutes. See Labor Laws of the United States, Bureau of Labor Statistics, Bulletin No. 148; Labor Decisions, 1912, Bulletin No. 112; *Ibid.*, 1913, Bulletin No. 152.

3. The single justice ruled that "the combination of the defendant employers to aid Witherell and Dobbins in resisting the strike of their employees by refusing to employ the striking employees of the Witherell and Dobbins Company was a legal combination, and not a boycott by way of a black list." Without now considering the correctness, as abstract legal propositions, of the rulings as to the legality of a general strike to secure recognition of the union in a particular shop, and of a combination of employers as a retaliatory measure, we are of opinion that the master's report does not sustain the conclusion of fact on which apparently the rulings were based, namely, that the black list was instituted after and to resist a general strike and that the Witherell and Dobbins strike was in effect a general one. On this point the chronology of the events in the case seems decisive. The strike at Witherell and Dobbins Company's factory took place on December 12, 1912. On the following day, December 13, a meeting of the shoe manufacturers was called by the association, Mr. Dobbins told them about the strike at his factory, and some of the lists of striking employees were distributed to those manufacturers who asked for them. On December 16, the plaintiff and one Cormier, whose name also was on the list, were discharged from the Fox Company's factory. The general strike of the shoe cutters in twenty-two of the sixty-five or seventy factories was not called until December 30 and was not contemplated when the original strike occurred on December 12. And as the master expressly finds, "the existence of the black list was generally known, and this undoubtedly operated as one of the elements which induced the men to give Oldham authority to call the [general] strike, and actuated them to come out after the strike had been called."

4. Assuming that, if this were an action at law, the plaintiff could recover for the damages caused by the unlawful combination of the defendants to blacklist him, the question remains whether he is entitled to prevail in the present suit. He has brought these proceedings in a court of equity. Under the established maxim that "he who comes into equity must come with clean hands," the court will not lend its active aid to him if he has been in equal wrong with the defendants touching the transaction as to which relief is sought, but will leave him to his remedy at law. The strike at the Witherell and Dobbins factory in which he joined is intimately connected with the black list of which he complains. The plaintiff individually was free, under his contract at will, to terminate his employment for any reason that he deemed sufficient. He had an undoubted right to join a labor organization. The employer as an individual had similar rights. But while each had a right to organize with others, it by no means follows that the organizations lawfully could do everything that the individual could do. See *Martell* v. *White*, 185 Mass. 255, 260; *Pickett* v. *Walsh*, 192 Mass. 572, 582. An act lawful in an individual may be the subject of civil conspiracy when done in concert, provided it is done with a direct intention to injure another, or when,

although done to benefit the conspirators, its natural and necessary consequence is the prejudice of the public or the oppression of individuals. 5 R. C. L. 1093.

Without discussing the conflicting authorities in other jurisdictions, in this Commonwealth, in the present stage of the industrial controversy, the principle is defined that the legality of a strike depends first upon the purpose for which it is maintained, and secondly on the means employed in carrying it on. As to the first, it is no longer in question that organized labor lawfully may strike for higher wages, shorter hours, and improved shop conditions. *Minasian* v. *Osborne*, 210 Mass. 250, and cases cited. On the other hand it has been decided that a strike instituted merely to compel a closed shop would not be justifiable on principles of competition, but would be unlawful. *Reynolds* v. *Davis*, 198 Mass. 294. *Folsom* v. *Lewis*, 208 Mass. 336. In the debatable ground between these extremes the conflict of rights must be adjusted as new conditions arise. And the question whether any particular strike is lawful is a question of law. *DeMinico* v. *Craig*, 207 Mass. 593. *Burnham* v. *Dowd*, 217 Mass. 351, 356.

What, then, was the purpose of the Witherell and Dobbins Strike? The master has found that it was instituted and maintained for the reason that the company, although willing to grant the request for an increase of wages, was unwilling to make an agreement as to prices with or through the union or its representatives; and the employees were unwilling to make such an agreement except through the union or its representatives. Plainly it would not be unlawful for the men to combine to secure an experienced spokesman for their collective bargaining, and to select an outsider in order to avoid future criticism from the employer or fellow employees. Further, the fact that the person they select to speak for them, and to act personally as their agent in presenting the proposed price list to their employer, happens to be an official of the union would not render unlawful a strike called to enforce their demand. Apparently that is as far as the employees of the Witherell and Dobbins shop went. The master expressly finds that "The price list did not contain any provision that the union must be recognized, or make any stipulation as to the employment of union or non-union labor, and no such demand was made." Not all the men who went on strike were members of the union. Later there developed, what probably was latent from the beginning, a struggle between the manufacturers to deal with their employees as they saw fit and the union to secure recognition. As a practical matter it might be difficult to find a permanent position where the union would rest content with a degree of "recognition" that allowed it to represent its members without interfering with the rights of their non-union fellow workmen and virtually forcing them to join the organization. But so far as the record and the findings of the master disclose, the strike in question did not contemplate the discharge of non-union men, and was not immediately or remotely a strike for a closed shop. On the facts appearing in the record we cannot say that the combination to strike at the Witherell and Dobbins shop was for an unlawful purpose, any more than a similar combination of employers for non-recognition of the union would be.

It is clear from the findings of the master, however, that the Witherell and Dobbins strike was conducted by unlawful means; that laws were violated and the well established rights of others invaded. On several occasions crowds of strikers paraded in front of the factory, cheering and shouting "Come out," and occasionally adding the names of men who remained at work; once at least one hundred or more paraded in

front of the factory, two by two in one direction and two by two in the opposite direction, so that there were four persons abreast most of the time, and the operatives leaving the factory had difficulty in breaking through the line. Some of the employees were intimidated and followed by crowds, others had to be escorted home by police officers, and four or five were assaulted by strikers or their sympathizers because they took the place of striking employees. One serious attack, characterized by the master as cowardly and unprovoked, was made on an employee named Mills, as he was going home after dark at the conclusion of his day's work. And while the persons who committed the assaults were not identified, the union and its officials made no effort to stop or control them; and the union men who were present when Mills was assaulted and rendered unconscious made no effort to give any aid or to pursue the man who struck the blow. The strike was carried on in a manner that reasonably caused the average employee to be apprehensive for his personal safety. The plaintiff cannot avoid responsibility for some, at least, of these acts. The strike, which was pending for more than three months after the bill was filed (as well as the "general" strike), was maintained under the direction of the union to which he belonged, and for the recognition of which he went on strike. He took part in the picketing and in at least one of the parades, and otherwise aided and encouraged it. See *Lawlor* v. *Loewe*, 235 U. S. 522.

The conduct of the plaintiff and the acts of others with whom he was legally identified preclude him from obtaining the active aid of a court of equity. For any damage caused by the black list which the defendants maintained he must seek his redress, if any, at law. Accordingly it becomes unnecessary to consider the effect upon his rights of his participation in the general strike of December 30, and the further questions, whether that strike was for a lawful or an unlawful purpose, and whether it was conducted by lawful or unlawful means.

For the reasons herein set forth a decree is to be entered overruling the exceptions, confirming the master's report, and dismissing the bill of complaint.

Decree accordingly.

John Bogni *et ali. v.* Giovanni Perotti *et als.*

Suffolk. January 19, 1916–May 18, 1916.

224 Mass. 152.

Constitutional Law — Labor — Labor Union — Equity Jurisdiction.

The right to work is property and one cannot be deprived of it by legislative enactment, it being protected by the Fourteenth Amendment to the Constitution of the United States and by the guaranties contained in the Massachusetts Declaration of Rights.

The provisions contained in St. 1914, c. 778, § 2, declaring that "in construing this act" the right to labor and to make and modify contracts to work "shall be held and construed to be a personal and not a property right," and prohibiting the granting of an injunction to enforce such a right "where no irreparable damage is about to be committed upon the property or property right of either" the employee or the employer, are unconstitutional and void.

St. 1914, c. 778, which provides in substance that the property right to labor for any individual or number of individuals associated together shall not be recognized in equity as property when assailed by a labor combination, unless irreparable damage is about to be committed upon property or a property right as there defined, would, if enforceable, deprive those employed in labor of "the equal protection of the laws" guaranteed by the Fourteenth Amendment of

the Constitution of the United States and by the equivalent provisions contained in our Declaration of Rights.

The power of courts to afford relief by injunction cannot be impaired by the Legislature in such a way as to prevent its use in favor of one property owner when it is preserved for the benefit of other property owners.

This court, having held St. 1914, c. 778, to be unconstitutional on the grounds stated above, found it unnecessary to consider whether it also was unconstitutional by reason of the preference attempted to be conferred upon combinations of laborers.

RUGG, C.J. This is a contest between two labor unions seeking similar employment as laborers in the building trades. The plaintiffs are members of the General Laborers Industrial Union No. 324, a voluntary unincorporated association, which is a branch of the national organization known as the Industrial Workers of the World. The defendants are members of the Hod Carriers, Building and Common Laborers Union, Local 209, a like association, affiliated with a national organization known as the American Federation of Labor. The plaintiffs in their bill allege that there have been, are now and will be numerous buildings under construction in Boston and its vicinity, in connection with which they have been, are now and will be engaged and ready to offer their services in profitable, useful and pleasant employment, and that they all have no means of supporting themselves except through such employment; that the defendants, well aware of the plaintiffs' conditions in respect of such employment, have conspired to deprive the plaintiffs of their employment and have threatened that, if they did not desert their own organization and cease to be members thereof and join the organization of the defendants, the latter would cause them to be discharged from their employment, and that the defendants have used unlawful pressure upon and have intimidated certain owners of property by threats of sympathetic strikes and otherwise not to employ the plaintiffs and in some instances by these means have caused the discharge of the plaintiffs from employment.

The conduct thus described plainly was calculated to harm the rights of the plaintiffs. Under general principles of the common law, which now have become well settled, the plaintiffs' bill sets out a wrong against their rights committed by the defendants, for which ordinarily relief would be afforded in equity by injunction, *Plant* v. *Woods*, 176 Mass. 492, *Pickett* v. *Walsh*, 192 Mass. 572, *DeMinico* v. *Craig*, 207 Mass. 593, *Hanson* v. *Innis*, 211 Mass. 301, *Folsom* v. *Lewis*, 208 Mass. 336, *New England Cement Gun Co.* v. *McGivern*, 218 Mass. 198, 203, as well as at law, *Berry* v. *Donovan*, 188 Mass. 353.

But the defendants justify their conduct as legal under St. 1914, c. 778.[1]

[1] That statute is as follows:

"AN ACT TO MAKE LAWFUL CERTAIN AGREEMENTS BETWEEN EMPLOYEES AND LABORERS, AND TO LIMIT THE ISSUING OF INJUNCTIONS IN CERTAIN CASES.

"SECTION 1. It shall not be unlawful for persons employed or seeking employment to enter into any arrangements, agreements or combinations with the view of lessening the hours of labor or of increasing their wages or bettering their condition; and no restraining order or injunction shall be granted by any court of the Commonwealth or by any judge thereof in any case between an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, or any act or acts done in pursuance thereof, unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application, for which there is no adequate remedy at law; and such property or property right shall be particularly described in the application, which shall be sworn to by the applicant or by his agent or attorney.

"SECTION 2. In construing this act, the right to enter into the relation of employer and employee, to change that relation, and to assume and create a new relation for employer and employee, and to perform and carry on

The words of § 2 declare unmistakably that the right to labor and to make and to modify contracts to work shall no longer be a property right, so far as that question arises "in construing this act." These last four words are not a limitation upon the broad enactment that the right to labor and to contract respecting labor shall not be property, for the reason that the right to work, if it cannot be protected as are other rights of property, ceases to have the attributes of other property in all their fullness and ceases to that extent to be property. A declaration of a right coupled with a prohibition against its protection by ordinary means renders the right a vain and insubstantial shadow.

That the right to work is property cannot be regarded longer an open question. It was held in *Cornellier* v. *Haverhill Shoe Manufacturers' Association*, 221 Mass. 554, at page 560, that "The right to labor and to its protection from unlawful interference is a constitutional as well as a common law right." It was said in *State* v. *Stewart*, 59 Vt. 273, 289, "The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property." In the *Slaughter-House cases*, 16 Wall. 36, 127, in the dissenting opinion of Mr. Justice SWAYNE, but respecting a subject as to which there was no controversy, occur these words: "Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty." It was settled that the right to labor and to make contracts to work is a property right by *Adair* v. *United States*, 208 U. S. 161, 173–175, and *Coppage* v. *Kansas*, 236 U. S. 1, 10. Controversy on that subject before this court must be regarded as put at rest by these decisions. The right to work, therefore, is property. One cannot be deprived of it by simple mandate of the Legislature. It is protected by the Fourteenth Amendment to the Constitution of the United States and by numerous guaranties of our Constitution. It is as much property as the more obvious forms of goods and merchandise, stocks and bonds. That it may be also a part of the liberty of the citizen does not affect its character as property. It was said in *Coppage* v. *Kansas*, 236 U. S. 1, at page 14, "Included in the right of personal liberty and the right of private property — partaking of the nature of each — is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

No discussion is required to show that it is beyond the power of the Legislature, under constitutions which guard the individual against being deprived of property without due process of law, to declare without any process at all that a well recognized kind of property shall no longer be property. "Lawful property cannot be confiscated" under the guise of a statute. *Durgin* v. *Minot*, 203 Mass. 26, 28. When legislative

business in such relation with any person in any place, or to do work and labor as an employee, shall be held and construed to be a personal and not a property right. In all cases involving the violation of the contract of employment either by the employee or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted but the parties shall be left to their remedy at law.

"SECTION 3. No persons who are employed or seeking employment or other labor shall be indicted, prosecuted or tried in any court of the Commonwealth for entering into any arrangement, agreement, or combination between themselves as such employees or laborers, made with a view of lessening the number of hours of labor or increasing their wages or bettering their condition, or for any act done in pursuance thereof, unless such act is in itself unlawful."

attempts to compel the deprivation of certain comparatively small sums of money without due process of law invariably fail, see for example, *Northern Pacific Railway* v. *North Dakota*, 236 U. S. 585; *Great Northern Railroad* v. *Minnesota*, 238 U. S. 340; *Chicago, Milwaukee & St. Paul Railroad* v. *Wisconsin*, 238 U. S. 491; *Louisville & Nashville Railroad* v. *Central Stock Yards Co.* 212 U. S. 132, it is manifest that something recognized as property by the law of the land cannot be extinguished utterly.

A further effect of the present statute is to deprive the plaintiffs of the equal protection of the laws. The statute provides in substance that the property right to labor of any individual or number of individuals associated together shall not be recognized in equity as property when assailed by a labor combination, unless irreparable damage is about to be committed upon property or a property right as there defined and that no relief by injunction shall be granted save in like cases for which there is no relief at law. That a man cannot resort to equity respecting his property right to work in the ordinary case simply because he is a laboring man, and that he cannot have the benefit of an injunction when such remedies are open freely to owners of other kinds of property, needs scarcely more than a statement to demonstrate that such man is not guarded in his property rights under the law to the same extent as others.

If a laborer must stand helpless in a court while others there receive protection respecting the same general subject which is denied to him, it cannot be said with a due regard to the meaning of constitutional guaranties that he is afforded "the equal protection of the laws" within the Fourteenth Amendment to the Constitution of the United States and similar provisions of our own Constitution. The right to make contracts to earn money by labor is at least as essential to the laborer as is any property right to other members of society. If as much protection is not given by the laws to this property, which often may be the owner's only substantial asset, as is given other kinds of property, the laborer stands on a plane inferior to that of other property owners. Absolute equality before the law is a fundamental principle of our own Constitution. To the extent that the laborer is not given the same security to his property by the law that is granted to the landowner or capitalist, to that extent discrimination is exercised against him. It is an essential element of equal protection of the laws that each person shall possess the unhampered right to assert in the courts his rights, without discrimination, by the same processes against those who wrong him as are open to every other person. The courts must be open to all upon the same terms. No obstacles can be thrown in the way of some which are not interposed in the path of others. Recourse to the law by all alike without partiality or favor, for the vindication of rights and the redress of wrongs, is essential to equality before the law. The constitutional principles are discussed in *Opinions of the Justices*, 211 Mass. 618; 220 Mass. 627; 207 Mass. 601; 207 Mass. 606, 611, *Smith* v. *Texas*, 233 U. S. 630, *Atchison, Topeka & Santa Fe Railway* v. *Vosburg*, 238 U. S. 56, *Gulf, California, Colorado & Santa Fe Railway* v. *Ellis*, 165 U. S. 150, *Chicago, Milwaukee & St. Paul Railway* v. *Polt*, 232 U. S. 165, *St. Louis, Iron Mountain & Southern Railway* v. *Wynne*, 224 U. S. 354.

Doubtless the Legislature may make many classifications in laws which regulate conduct and to some extent restrict freedom. So long as these have some rational connection with what may be thought to be the public health, safety or morals, or in a restricted sense, "so as not to include everything that might be enacted on grounds

of mere expediency," the public welfare, they offend no constitutional provision. *Commonwealth* v. *Strauss*, 191 Mass. 545, 550. Weekly payment laws, employers' liability acts, workmen's compensation acts, inspection laws based on the number of employees, and numerous statutes similar in principle have been upheld. See *Commonwealth* v. *Libbey*, 216 Mass. 356; *Young* v. *Duncan*, 218 Mass. 346, 353; *Booth* v. *Indiana*, 237 U. S. 391; and *Tanner* v. *Little*, 240 U. S. 369, where many cases are collected. But all these and like statutes are quite different from one declaring that the laboring man either alone or in association with his fellows shall, as to his property right to work, be put on a footing of inferiority as compared with owners of other kinds of property when he appears in court respecting that property right. It is primary and fundamental in any correct conception of justice that the laboring man stands on a level equal with all others before the courts. Whatever may be his social or economic condition outside, when he enters the court the law can permit no rule to fetter him in the prosecution of his claims or the preservation of his rights which does not apply equally to all others respecting the same kinds of claims and rights.

It has been argued that since the equitable jurisdiction of the court is largely statutory, *Parker* v. *Simpson*, 180 Mass. 334, 350, it may be curtailed by the Legislature in respect of the power to grant injunctions. It is one thing to affect the scope of equity by extending or restricting the branches of that jurisprudence which courts may administer; it is a quite different matter to enact that some citizens may resort to it while others may not.

Without discussing other aspects of this proposition, it is enough to say that the power of courts to afford injunctive relief cannot be impaired by the Legislature in such a way as to prevent its use in favor of one property owner, when it is preserved for the benefit of other property owners. It is an elementary principle of equity that an injunction never is issued except to prevent irreparable injury. If the statute means anything more than this, there would be other difficulties about its construction which need not now be elaborated.

Associations of laborers, to accomplish lawful objects by legal means, have been recognized and protected in this Commonwealth, at least since the decision of *Commonwealth* v. *Hunt*, 4 Met. 111, in 1842, now nearly seventy-five years ago. But it is not necessary to consider whether the preference attempted to be conferred upon combinations of laborers by the act means anything more than that, and, if it does, whether it comes within the condemnation of the principles expounded at length in *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, where statutes designed to secure to members of labor unions immunity from discharge on that ground were held to violate the Federal Constitution. See, further, *State* v. *Julow*, 129 Mo. 163; *State* v. *Kreutzberg*, 114 Wis. 530; *Marshall & Bruce Co.* v. *Nashville*, 109 Tenn. 495; *Lewis* v. *Board of Education of Detroit*, 139 Mich. 306.

It has been argued, also, that, the plaintiffs being laborers and the statute having been passed for the benefit of laborers, the plaintiffs as such are not in a position to question its constitutionality. Reliance is placed on cases like *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, where plaintiffs who have suffered no harm by reason of the provisions of a statute have been precluded from challenging its validity. The plaintiffs by their bill set forth a plain wrong done to themselves by the defendants. The invasion of their constitutional right is direct and substantial. They have an

indubitable standing to raise the constitutionality of a statute which shelters such conduct.

Recognizing every presumption in favor of the validity of statutes enacted by the Legislature, we are all of opinion that the instant statute cannot be sustained. The demurrer[1] which is based on it should be overruled. *Decree reversed.*

T. G. Connolly, for the plaintiffs, submitted a brief.

F. W. Mansfield, (*J. A. Donovan* with him,) for the defendants.

Citations Having Indirect Bearing on Labor Injunctions.

The following cases, although of not sufficient importance with reference to labor disputes to justify their being printed in full, should be noticed, however, by one desiring to investigate the subject more fully:

Cases with respect to malicious interference with one's employment and amount of recovery for damages thereunder: *Lopes* v. *Connolly*, 210 Mass. 487; *Loughery* v. *Huxford*, 206 Mass. 324.

Cases relating to malicious injury of the employer's business and the law governing the restraint thereof: *Holbrook* v. *Morrison*, 214 Mass. 209.

Cases relating to the rights of courts of equity to restrain past employees from divulging trade secrets: *American Stay Co.* v. *Delaney*, 211 Mass. 229.

Case relative to parading by societies and the legality of carrying in such parades red or black flags or banners: *Commonwealth* v. *Karvonen*, 219 Mass. 30.

Cases dealing with questions arising from the "blacklisting" of certain alleged delinquent debtors by associations of tradesmen: *Hartnett* v. *The Plumbers Supply Association*, 169 Mass. 229; *Weston* v. *Barnicoat*, 175 Mass. 454.

Case bearing on the constitutional guarantees of the right "to acquire, possess and protect property": *Commonwealth* v. *Perry*, 155 Mass. 117.

An important case affecting the rights of persons injured personally through illegal action of strikebreakers, and the rights of such persons to recover in tort for such personal injuries: *Nute* v. *Boston & Maine R.R. Co.*, 214 Mass. 184.

Other cases representing another class of Massachusetts decisions of some importance with relation to the law governing this subject: *Morasse* v. *Brochu*, 151 Mass. 567; *Tasker* v. *Stanley*, 153 Mass. 148; *Garst* v. *Charles*, 187 Mass. 144.

[1] The demurrer was argued before *Wait*, J., who made an order sustaining the demurrer, and later, it appearing that the plaintiffs did not ask to amend the material allegations of their bill, made a final decree dismissing the bill. The defendants appealed.

III.

TYPICAL FORMS.

1. A BILL OF COMPLAINT.

COMMONWEALTH OF MASSACHUSETTS.

ESSEX, ss. IN EQUITY. SUPERIOR COURT.

JOHNSON L. WALKER and HERBERT F. WALKER, doing business under the firm name of J. L. WALKER & CO., *Complainants*, *v.* ALEXANDER S. CLARK, NORMAN L. KELLEY, DANIEL J. DOWNING, FRED J. MITCHELL, EDWARD MCCREADY, JOHN HILDRETH, E. F. SMITH, MICHAEL NOHELTY, EDGAR B. GEDNEY, WILLIAM SAWYER, F. X. LAFOIE, EDWARD P. ALBEE, WILLIAM J. KELLEY, and EDWARD FERGUSON, *Respondents.*[1]

SUBSTITUTED BILL OF COMPLAINT.

To the Honorable the Justices of the Superior Court in Equity within and for the County of Essex:

Respectfully represent: Your complainants:

1. That your complainant Herbert F. Walker is of Lynn in the county of Essex. That your complainant Johnson L. Walker is of Boston in the county of Suffolk. That they are co-partners doing business under the firm name and style of J. L. Walker & Co., having their usual place of business in Lynn in the county of Essex. That they are engaged in the business of manufacturing boots and shoes and that they employ large numbers of persons in their business.

2. That your complainants are informed and believe and thereupon allege that the respondent Norman L. Kelley is a member of and president of a certain voluntary, unincorporated association or trade union known as Edgemakers Union No. 1.

That the respondent Daniel J. Downing is secretary of said Edgemakers Union No. 1.

That the respondent Fred J. Mitchell is treasurer of said Edgemakers Union No. 1.

That the respondent Alexander S. Clark is business agent of said Edgemakers Union No. 1.

That the respondents McCready, John Hildreth, E. F. Smith, Michael Nohelty, Edgar B. Gedney, William Sawyer, F. X. Lafoie, Edward P. Albee, William J. Kelley, Edward Ferguson are members of said Edgemakers Union No. 1 and that all of said respondents are of Lynn in the county of Essex.

3. That the remaining members of said union are too numerous to be set forth individually in this bill and that moreover the names of the remaining members are to your complainants unknown. That those herein named fairly represent the interests of said remaining unknown members. Wherefore, your complainants set forth and join the above named respondents both individually and as representing all the members of the aforesaid union herein referred to, thereby joining as respondents said remaining unknown members of said Edgemakers Union No. 1.

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[1] Superior Court, Essex County, Equity No. 212.

4. That there is now a strike in progress among certain of the complainants' employees, and your complainants are informed and believe and thereupon allege that said employees are members of the respondent union and that said employees have joined said strike in consequence of the orders of the respondents; that such of said employees of the complainants as are members of said union have ceased to work for the complainants for the purpose of engaging in said strike; and that said strike has been ordered as aforesaid by the respondents.

5. That the complainants now employ certain persons in the said businesses who do not belong to said respondent unions.

6. That the respondents have unlawfully and maliciously conspired together to injure and ruin the complainants in their businesses.

7. That in pursuance of said conspiracy the respondents have been and are engaged in unlawfully causing and persuading and endeavoring to persuade the complainants' workmen to leave their several employments, and that the said respondents do congregate in squads and cause others to so congregate at points near the complainants' places of business, and at places where the complainants' workmen are accustomed to go to and from their work, and by language, threats, conduct, violence, and other unlawful means, annoy, intimidate, and interfere with the complainants' said workmen for the purpose of unlawfully inducing and compelling said workmen to leave their employment; that said respondents are and were a menace to the complainants' workmen and that they have intimidated large numbers of the complainants' workmen and have compelled and induced them to leave the complainants' employ; that they are at the present time endeavoring to compel others now in the employment of the complainants to leave the same.

8. That in pursuance of said conspiracy the respondents act and cause others to act as pickets and patrol the streets near the complainants' premises for the purpose of maliciously persuading workmen employed by the complainants or desirous of entering the complainants' service from remaining in or entering said service.

9. That in pursuance of said conspiracy and for the purpose of intimidating persons in the employ of the complainants, and to compel such persons to leave such employment, the respondents act and cause others to act as pickets and patrol the streets upon which said persons go to and from their work to follow such persons about the streets of the city of Lynn in an intimidating and threatening manner, and annoy, hinder, and assault such persons and cause other persons to follow, annoy, hinder, and assault such persons so employed by the complainants as aforesaid.

10. That your complainants are informed and believe and thereupon allege that in pursuance of said conspiracy, and for the purpose of injuring the business of the complainants by rendering it impossible for the complainants to secure employees and to make contracts in the pursuit of their business, the respondents have caused the complainants to be reported as "unfair" and to be placed upon an "unfair list," so called.

11. That your complainant will suffer irreparable injury if the respondents continue to act in pursuance of said conspiracy, and that your complainant is without any adequate remedy at law in the premises.

Wherefore, your complainants pray:

First. That an injunction may issue restraining the respondents and each and every of them from interfering with the complainants' business by intimidating, threatening, annoying or hindering any person now or hereafter in the employment of the

complainants or desirous of entering the same from remaining therein or from entering the same.

Second. That an injunction may issue restraining the respondents and each and every of them from congregating in squads in the vicinity of the complainants' premises and from establishing patrols and pickets in the vicinity of the complainants' premises, and from causing others to so congregate to picket or patrol in the vicinity of said premises.

Third. That an injunction may issue restraining the respondents and each and every of them from obstructing, annoying, interfering with, or intimidating any person or persons who now are or may hereafter be in the employment of the complainants or desirous of entering the same in entering or leaving the complainants' premises or in proceeding to and from their places of abode and said premises or in remaining peacefully in their places of abode or in pursuing their respective ways about the streets after working hours.

Fourth. That an injunction may issue restraining the respondents and each and every of them from maliciously inducing or enticing any person now or hereafter in the employment of the complainants to leave the same.

Fifth. That an injunction may issue restraining the respondents and each and every of them from reporting the complainants as "unfair" or placing or keeping the names of the complainants upon any "unfair list," so called.

Sixth. That an injunction may issue restraining the respondents and each and every of them from interfering with the complainants' business by any scheme or design among themselves or with others organized for the purpose of interfering with or injuring the complainants' business by intimidating, annoying, or obstructing persons now or hereafter in their employment or desirous of entering the same, or by any other means.

Seventh. And for such other and further relief as to this honorable court may in the premises seem meet and proper.

Filed May 15, 1907.

2. USUAL FORM OF OATH TO ACCOMPANY THE BILL OF COMPLAINT.[1]

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. APRIL 28, 1906.

Then personally appeared before me the above-named William E. Haskell and made oath that he is treasurer of the Boston Herald Company, the plaintiff in the above bill, that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

EDWARD K. HALL,
Justice of the Peace.

Filed April 28, 1906.

[1] Taken from the case of Boston Herald Co. *v.* Driscoll, Superior Court, Suffolk County, Equity No. 3777.

3. A WRIT OF INJUNCTION (AD INTERIM).[1]

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. To (the persons against whom the bill was brought). *Greeting:*

We command you that you appear before our Superior Court, at the rules to be holden at Boston within our county of Suffolk on the first Monday of June, next, then and there to answer to a bill of complaint exhibited against you in our said court, in the county of Suffolk by THE BOSTON HERALD COMPANY, a corporation duly organized under the laws of Massachusetts, having its usual place of business at Boston in said county of Suffolk.

And you are hereby notified to appear before some of the justices of this court, at the equity session, first division, in the courthouse in Boston, in said county of Suffolk, on Monday, the thirtieth day of April current, at 10 o'clock, A.M., to show cause why an injunction should not issue as prayed for in said bill of complaint:

And in the meantime and until such hearing, you, the respondents Driscoll, Cashman, Cameron, Platt, Barton, Noble, and Guntner, and each of you individually and as officers and agents of said unions and organizations, your attorneys and counsellors, are enjoined and commanded to desist and refrain from directly or indirectly inducing or seeking to induce the workmen engaged on or about the premises on Tremont, Mason, and Avery Streets in said Boston mentioned in the bill, or any of them, to strike or quit work and from in any way interfering with the completion of the work in and about the said buildings or with the conduct of the plaintiff's business directly or indirectly and from combining and conspiring so to interfere with said work and business and from combining and conspiring to interfere with the plaintiff's contract with the Derby Desk Company mentioned in the bill or to coerce or compel the plaintiff to reject and remove the desks mentioned in said bill and to do and receive what our said Court shall then and there consider in that behalf.

Hereof fail not, under the pains and penalties, in the law, in that behalf, provided.

Witness, John A. Aiken, Esquire, at Boston, the twenty-eighth day of April in the year of our Lord one thousand nine hundred and six.

HENRY E. BELLEW,
Assistant Clerk.

Filed April 28, 1906.

4. FORM OF STIPULATION COMMONLY USED.[1]

STIPULATION.

It is hereby stipulated and agreed by the parties in the above entitled cause that the defendants will not violate the prayer of the bill, that no injunction shall issue, that the *ad interim* injunction may be dissolved, and that the defendants shall not be required to appear or answer further.

POWERS AND HALL,
Attorneys for Plaintiff.
FREDERICK W. MANSFIELD,
Attorneys for the Defendants, Driscoll, Cashman, Cameron, Platt, Barton, Noble, Guntner, and the defendant Labor Unions and Organizations.

Filed May 2, 1906.

[1] Taken from the case of Boston Herald Co. *v.* Driscoll, Superior Court, Suffolk County, Equity No. 3777.

5. A DEFENDANTS' ANSWER TO AMENDED BILL OF COMPLAINT.[1]

Now come all the defendants in the above entitled case and for answer to the plaintiff's amended bill of complaint say:

1. They admit that Edward J. McGivern and Patrick O'Connor are officers and members of Union No. 10, Boston Branch, Operative Plasterers International Association of United States and Canada, and admit that James O'Connor is a member thereof, but deny that he is an officer; they deny that William Osgood and William Pawley of Salem are officers and members of the Salem branch of the said association and say that there is no such branch of said association, but they admit that William Pawley is an officer and a member of the local Salem branch of Bricklayers and Plasterers International Union and that William Osgood is a member thereof but not an officer; they admit that George Thornton of Boston is vice-president of the Bricklayers and Masons International Union of America and that the same is a voluntary unincorporated association, and that John T. Walsh, Edmund Russell, and Theodore Eldracher are officers and members of Bricklayers Local Union No. 3 of Boston, but deny that all the aforesaid individuals are chosen by any of the unions or associations mentioned to manage their affairs or for doing any unlawful acts as set forth by the plaintiff's bill and they say that they have no such power.

2. They admit that Bricklayers Union No. 3 is a labor union and that Bricklayers and Masons International Union of America is a central organization to which the various local unions belong, as is set forth in the first paragraph on page three of the plaintiff's amended bill of complaint, but they deny that there is a Salem branch of the Operative Plasterers International Association or that such branch is affiliated with the aforesaid international union; they admit that said Edward McGivern and Patrick O'Connor are respectively the president and business agent of Boston Plasterers Union No. 10, but they deny that James O'Connor is the treasurer thereof and say he is not treasurer but that he is a member; they deny that said William Osgood is the president of the Salem branch of Plasterers Union No. 10, but say that he is a member of the Salem Local Bricklayers and Plasterers Union, but is not president; they admit that said William Pawley is secretary of said Bricklayers and Plasterers Union, but not of a branch of the Operative Plasterers International Association of America; they admit that the defendants Russell, Eldracher, and Walsh are respectively president, secretary, and business agent of Bricklayers Union No. 3.

3. Answering to the first paragraph upon the fourth page of the plaintiff's amended bill of complaint that on or about June 1, 1906, a circular was issued to various firms of Boston and vicinity stating the conditions under which members of Bricklayers Union No. 3 would work on and after a certain day, the defendants say that such a circular was issued and admit that the rules and conditions contained in said circular included the requirements that all foremen should be members of the union and that its business agent should be allowed to visit buildings in the process of erection while attending to his official duties, and they state that there was also contained a request for higher wages and for shorter hours and that certain employers refused to accept said conditions, but do not know if the plaintiff so refused; they admit that there was a strike, but deny that the plaintiff was declared unfair by said Bricklayers Union or by Bricklayers International Association on account of its refusing to accept said con-

[1] The Woodbury & Leighton Co. v. McGivern, Supreme Judicial Court, Suffolk County, Equity No. 13054.

ditions or for any other cause; they admit that said strike now continues and that the members of said unions still refuse to work for the plaintiff, but they deny that they have hindered and impeded the plaintiff in various ways since June 1, 1906, as set forth in the plaintiff's amended bill of complaint, other than in a lawful manner.

4. They admit that the plaintiff is now constructing certain buildings in Salem, as set forth in the second paragraph on the fourth page of the plaintiff's amended bill of complaint, but they say that they do not know whether or not the plaintiff made a contract with the Robert Gallagher Company and with Muir Brothers, as set forth in said paragraph. . . .

5. Answering to the second paragraph on page five of the plaintiff's amended bill of complaint, the defendants deny that said Gallagher Company and said Muir Brothers were notified that any of the defendants would not work for them, or that any Salem local union was so notified by Bricklayers Union No. 3 as alleged in said paragraph, and they deny that there were any threats made that said Gallagher Company. . . .

7. The defendants neither admit nor deny the allegations contained in the second paragraph of page six of the plaintiff's amended bill of complaint, but they deny that there was any illegal interference with the business of the plaintiff as alleged in said paragraph.

8. The defendants deny that they have combined and conspired to prevent the plaintiff from doing the plastering upon said buildings or to prevent its carrying out any contracts it might have had for the construction thereof, or that any of the defendants or any of the unions or organizations sought to be joined as defendants have ever imposed fines or penalties upon any of their members who work upon said buildings or have ever voted to impose fines and penalties; they deny that they have pickets placed upon said buildings to threaten any of the plaintiff's workmen, or any person who may desire to enter its employ, with fines and penalties or with any other punishment, and they deny that said plasterers' unions maintained pickets and agents to induce and incite the plaintiff's employees to leave its employment and break contracts of employment with the plaintiff, and they say that if any employees were induced to leave the plaintiff's employment that they were not so induced by any illegal or unlawful means employed by the defendants; they admit that they have endeavored to prevent workmen from entering the employment of the plaintiff, but that said workmen were members of some of the various unions sought to be joined as defendants and that no illegal means were employed by these defendants to accomplish that result; they deny that any sympathetic strike or sympathetic action of any kind has been taken by any plasterers' union in order to assist any bricklayers' union in any controversy they may have had with the plaintiff, and they again deny any general or continuing conspiracy on their part to coerce or compel the plaintiff to accede to the demands of the defendants for the purpose of injuring the plaintiff or for any other purpose.

9. Answering to the last paragraph on page seven of the plaintiff's amended bill of complaint, the defendants say if there was any combination, as set forth in the plaintiff's bill, that it was not illegal and in restraint of trade, but was allowable under rules of trade competition and as a means of enforcing a justifiable and legal strike, or that any such combination was or is intended to injure the plaintiff in its business or to compel the plaintiff to manage its business according to the dictates of the defendants and they deny that they have illegally inflicted any serious or irreparable damage upon the plaintiff. The defendants admit that substantially all the capable and ex-

perienced plasterers in Boston and vicinity and generally throughout the country are to a large extent members of similar unions and that it is hard to secure other plasterers to do plastering work, but they deny that such hardship was inflicted by any illegal practice used or adopted by them.

10A. The defendants say that all of the members of the various organizations included in the plaintiff's bill of complaint as defendants amount in numbers to many thousands, and that the individual members joined as defendants are not a sufficient number to fairly represent all those sought to be joined in said bill; they further say that the plaintiff seeks to join as defendants "all the members and branches" of the Bricklayers and Masons International Union of America, and that this association has branches in every State in the United States of America and in Canada and that this Court has no jurisdiction over any members or branches thereof existing without the Commonwealth of Massachusetts, and the plaintiff's bill should be dismissed for want of jurisdiction.

10B. And further answering to the second paragraph on the fourth page of the plaintiff's amended bill of complaint, the defendants say that if such contracts were made as alleged and said Robert Gallagher Company and said Muir Brothers refuse to carry out the same, and the plaintiff is suffering great loss thereby, the plaintiff's remedy is an action at law for damages against said Robert Gallagher Company and said Muir Brothers, and the defendants cannot be held to answer to this bill of complaint by reason of any breach of said contracts on the part of said Robert Gallagher Company and said Muir Brothers.

10C. And further answering to the second paragraph on page five of the plaintiff's amended bill of complaint, the defendants say that if any threats were made as alleged against said Gallagher Company and said Muir Brothers that this plaintiff cannot complain therefor, and that said Gallagher Company and said Muir Brothers should be made complainants to this bill before the defendants can be compelled to answer to the allegations contained in said paragraph.

11. And the defendants say that the plaintiff has a plain, adequate, and complete remedy at law for the damage complained of.

Wherefore your defendants pray that the temporary injunction now in force against Edward J. McGivern be dissolved, the bill dismissed, and that the defendants be allowed their costs.

Filed November 13, 1908.

6. AN INTERLOCUTORY DECREE. — TEMPORARY INJUNCTION.[1]

The above entitled cause came on to be heard upon the complainants' motion for a temporary injunction, and after hearing thereon in consideration thereof it is ordered, adjudged, and decreed that an injunction issue *pendente lite* to remain in force until the further order of this Court or some justice thereof; restraining the respondents individually named in said bill, and the members of Edgemakers' Independent Union No. 1 of Lynn and each and every of them, their agents and attorneys, from interfering with the complainants' business by obstructing, threatening, intimidating, or interfering with any person or persons who now are or may hereafter be in the employment of the complainant or desirous of entering the same, or by inducing or attempt-

[1] Walker v. Clark, Superior Court, Essex County, Equity No. 212.

ing to induce any person now or hereafter in the employment of the complainant to break any contract of employment with the complainant, and from interfering with the complainants' business by picketing or patrolling or causing others to picket or patrol the streets in the vicinity of the complainants' place of business, or by following persons now or hereafter in the employment of the complainant to or from their work, or their places of abode, for the purpose of inducing such persons to leave the employment of the complainants.

Filed May 23, 1907.

7. AN INTERLOCUTORY DECREE REFERRING THE CASE TO A MASTER.[1]

This case came on to be heard upon an application of the plaintiff for a preliminary injunction to restrain the defendants as prayed for in the plaintiff's bill, and it appearing that Henry Wardwell, Esq., is unable to serve, it is therefore ordered and decreed that the matter be referred to F. Rockwood Hall, Esq., of Boston, Mass., as master, to find and report the facts to the court forthwith; the hearing to commence at once and so far as practicable to proceed from day to day until concluded.

8. A MASTER'S REPORT.[2]

Pursuant to the rules referring the above causes to me as master to find and report the facts, the parties appeared before me with their witnesses on a number of different days. I heard their evidence (which was quite voluminous) and the arguments of counsel, and find and report as follows:

The three causes above named[3] were by agreement of counsel, and for convenience heard together, the defendants in all three suits being the same, and the allegations in the three bills, and the relief prayed for therein, being substantially alike.

The plaintiffs above named are corporations or firms engaged in the business of manufacturing boots and shoes in the city of Lynn.

The defendant "Knights of Labor No. 3662" (more properly styled "Cutters Assembly No. 3662, Knights of Labor") is a voluntary local association, unincorporated, of about 1,000 Lynn shoe cutters, with a constitution and by-laws, operating under a charter from the general order of the Knights of Labor. About 100 of its members were in the employ of the several plaintiffs. Its officers consist of a president, vice-president, treasurer, secretary, agent, and an executive board of seven members, including the president and vice-president. It has a hall on Andrew Street in Lynn, resorted to by its members, and where its meetings are held. The defendant I. Boynton Armstrong is its president; the defendant Frank Q. Woods is its treasurer; the defendant Sidney Smith is its secretary; the defendant Edwin Snow is its agent; and the above named I. Boynton Armstrong, together with the defendants Adelbert C. Colby, John J. Couhig, Stephen Enghaben, Arthur Foss, A. W. Harris, and a Mr. Parker, not named as an individual defendant in any of the actions, constitute its executive board.

There was no evidence offered tending to show who the rest of the defendants

[1] Taken from the case of Walton & Logan Co. *v.* Knights of Labor No. 3662, Superior Court, Essex County, Equity No. 2565.

[2] *Ibid.* Only so much of the several pages of the report as is necessary to show its general nature has been given.

[3] The cases of Harney Bros. and of D. A. Donovan & Co. against the same defendants were heard with this case. Cases growing out of the same cause of action are usually heard together before one master.

above named were, nor what, if any, connection they had with any of the matters mentioned or referred to in any of said bills of complaint. Therefore, wherever the term "defendants" is hereinafter used it refers merely to the defendant assembly and its officers above designated.

These bills of complaint are all of similar tenor, and allege in substance that the plaintiffs are, and have been for a long time, engaged in the manufacture of boots and shoes in Lynn, employing a large number of hands, among them a number of shoe cutters who are members of the Knights of Labor No. 3662; that on or about January 16, 1903, said cutters at the instigation of the defendants went out on a strike, and that the defendants attempted to induce a number of other employees of the plaintiffs to strike by the use of threatening language, by the throwing of missiles, and by the collection of large crowds about the plaintiffs' premises, said crowds being composed of members of said Cutters Assembly, and their sympathizers; that since said January 16 the plaintiffs have endeavored to supply the places of the striking cutters and have to a certain extent succeeded in so doing, but that the defendants, their servants and agents, wilfully and maliciously patrol and obstruct the streets about the plaintiffs' premises and by the use of pickets wilfully and maliciously endeavor to cause the new cutters to leave the plaintiffs' employment, and that they have wilfully and maliciously interfered with and tried to intimidate said new cutters and thereby force them to leave the plaintiffs' employment, and have threatened said new cutters with bodily harm if they continued in said employment and that they still continue to employ said methods for the purpose aforesaid; and that they actually seized one of said new cutters and carried him against his will to their hall, and there by force and threats induced him to leave the employment of one of the plaintiffs; that by reason of said patrol and pickets, and by their wrongful and wilful acts above set forth, the defendants, their servants, and agents, have been and are a nuisance and obstruction to persons traveling in the streets, and to persons in the employ of the plaintiffs, and to persons intending to trade with the plaintiffs at their premises, and to persons intending to enter the employment of the plaintiffs; that all the acts of the defendants above set forth are a part of a scheme to wrongfully and maliciously compel and induce persons in the employment of the plaintiffs to withdraw therefrom or to abstain from entering said employment; that the plaintiffs' business has been greatly damaged thereby, and that if the defendants are permitted to continue their said wrongful acts the plaintiffs' business will be further seriously injured and destroyed.

The applications in these several cases being for preliminary injunctions no answers have been filed in any of them.[1] . . .

. . . . . .

I find upon the whole evidence that these defendants, in the performance of the various acts above set forth, except so far as the same were committed by persons other than members of said assembly, or those in sympathy with them, were actually or constructively engaged in an attempt to compel the plaintiffs to accede to the demands of said assembly, and execute the agreements above set forth, and, failing in that, to injure or destroy the plaintiffs' business.

I am not required by the rules referring these cases to me to make any rulings upon the questions of law involved therein.

Filed February 25, 1903.

[1] A long discourse on the relations of the parties prior to the trouble resulting in the bringing of the bills, with several findings, has been omitted.

9. A FINAL DECREE GRANTING A PERMANENT INJUNCTION.[1]

This case came on to be heard after issue joined, and upon hearing the parties and their evidence and arguments of counsel thereon, and upon consideration thereof, and it appearing to the court that the officers and members of the voluntary unincorporated association known as Union No. 10, Boston Branch Operative Plasterers International Association of United States and Canada, and the Bricklayers and Plasterers Union No. 25 of Salem, Massachusetts, have combined and conspired together not to work for the complainant, in order thereby to secure better wages for the members of the voluntary unincorporated association known as the Bricklayers Benevolent and Protective Union No. 3 of said Boston, which has incited them thereto, and for no other purpose, it is

Ordered, adjudged, and decreed that the defendants Edward J. McGivern, James O'Connor, Patrick O'Connor, and all other officers and members of said Union No. 10, Boston Branch Operative Plasterers International Association, their servants, attorneys, and agents, the defendants William Osgood and William Pawley, and all other officers and members of said Bricklayers and Plasterers Union No. 25 of said Salem, their servants and agents, be, and hereby are, perpetually enjoined and restrained from combining and conspiring together to force the complainant Woodbury & Leighton Company to comply with the demands of the said Bricklayers Benevolent and Protective Union No. 3 of said Boston, and in the case of each of said unions, and all members thereof, are further enjoined and restrained from combining and conspiring together, by reason of the failure of the complainant to comply with the demands of said Bricklayers Benevolent and Protective Union No. 3 aforesaid, not to work for the complainant or for any other person, firm, or corporation who may be now, or hereafter, under contract with the complainant, and by attempting to carry on such combination and conspiracy by the imposition of fines and penalties, or by threats thereof, or in any other manner whatsoever; and said defendants are further enjoined and restrained from carrying on the combination and conspiracy aforesaid not to work for the complainant by reason of the failure of the complainant to comply with the demands of the said Bricklayers Benevolent and Protective Union No. 3 aforesaid:

1. By interfering with the complainant in the erection of a high school and registry of deeds in Salem, and of any other buildings now or hereafter in process of erection by it, by inducing or inciting any person or persons now in its employ to leave such employ, or who may desire to enter into its employ from entering therein, in any way or manner, by the imposition of fines and penalties, by threats thereof, or otherwise; or

2. By interfering with the plaintiff's business by picketing the streets in the vicinity of any such buildings, and

3. By threatening, annoying, or hindering any person or persons now in, or desiring to enter into, its employ, and

4. By persuading and endeavoring to persuade any person or persons who may now or hereafter have contracts with the plaintiff to break the same, and from reporting the complainant as unfair by reason of the failure of the complainant to comply with the demands of the Bricklayers Benevolent and Protective Union No. 3 aforesaid.

And it is further ordered, adjudged, and decreed that the defendants Russell,

[1] Taken from the case of The Woodbury & Leighton Co. *v.* McGivern, Supreme Judicial Court, Suffolk County, Equity No. 13054.

Eldracher, Walsh, Thornton, and all other officers and members of the said Bricklayers Benevolent and Protective Union No. 3 of Boston, their servants, attorneys, and agents, be, and hereby are, perpetually enjoined and restrained from inducing in any manner or by any means the said Union No. 10, Boston Branch Operative Plasterers International Association, and each and every member thereof, and the said Bricklayers and Plasterers Union No. 25 of Salem, and each and every member thereof, to refuse to work for the complainant, or for any person, firm, or corporation who may now or hereafter be under contract with the complainant, by reason of the failure of the complainant to comply with the demands of the said Bricklayers Benevolent and Protective Union No. 3 aforesaid.

And it is further ordered, adjudged, and decreed that the bill may be dismissed without prejudice and without costs against the members of the Bricklayers and Masons International Union of the United States and Canada.

And it is further ordered, adjudged, and decreed that the complainant recover its costs of suit, to be taxed in the sum of one hundred and twenty-nine and $\frac{19}{100}$ dollars, and that execution issue therefor.

And it is further ordered, adjudged, and decreed that the defendants Edward Meleedy, James Moloney, Henry J. Saunders, George J. Twiss, and Daniel H. Driscoll each recover their costs taxed in the sum of five dollars and thirty-three cents, and that execution issue therefor.

Filed November 27, 1908.

IV.

CASES RELATING TO LABOR DISPUTES IN THE COURTS OF EQUITY IN MASSACHUSETTS, 1910–1916.

The following is a record of the proceedings in the cases arising from industrial disputes in the Supreme (Single Justice) and Superior courts of equity in Massachusetts from November 1, 1910 to February 1, 1916, arranged in chronological order for each county. The docket number, the name of the case in full, and a résumé of the more important papers filed in each case, with the dates of filing or issuance thereof, are given.[1] Cases of contempt of court, that is to say, where there has been a violation by any of the parties of the injunction issued by the court, are placed together, beginning on page 234, under the caption "Cases of Contempt of Court."

Middlesex County.

SUPREME JUDICIAL COURT.

FRANK HANSON *v.* GEORGE INNIS *et als.* 1461 EQ.

August 27, 1909. *Bill* filed. (See the decision of the Supreme Judicial Court for the Commonwealth in this case, 211 Mass. 301, *ante*, page 147.)

Suffolk County.

SUPREME JUDICIAL COURT.

ATTORNEY-GENERAL *v.* JOSEPH BEDARD *et als.* 17974 EQ.

March 11, 1912. *Bill* filed. (See the decision of the Supreme Judicial Court for the Commonwealth in this case, 218 Mass. 378, *ante*, page 170.)

EDWIN W. COX *v.* ELIZABETH PEABODY HOUSE ASSOCIATION *et als.* 18052 EQ.

April 10, 1912. *Bill* filed alleging a conspiracy by the Building Trades Council of Boston with certain unions whose members were working on the same building with the employees of the complainant, who admits employing union and non-union men. The Elizabeth Peabody House Association, it is alleged, refused to fulfil its contract with the complainant unless some satisfactory arrangement could be brought about with the Building Trades Council. Prayers for an injunction restraining the association from breaking its contract and prohibiting the other respondents from interfering with the complainant's business; and for other relief.

April 17, 1912. *Temporary injunction* issued restraining the respondents from continuing the acts complained of.

April 22, 1913. *Petition for attachment for contempt* against certain respondents. (*See* under the heading "Cases of Contempt of Court," page 234.)

[1] Formal motions, demurrers, answers, and interlocutory matters of merely technical importance have ordinarily been passed over without notice.

MRS. A. R. KING CORPORATION *v.* JOHN F. BOWEN *et als.* 18097 EQ.

April 18, 1912. *Bill* filed alleging that certain of the officers and members of the Shoe Workers' Protective Union of Lynn were interfering with the complainant's business by causing the workmen to strike for the purpose of compelling the complainant to bring pressure to bear on the Crown Shoe Company to reinstate certain former union men who had been discharged by it. Prayers that the defendants be enjoined. The respondents answered.

March 28, 1912. *Master's report* filed with a finding that the complainant and the Crown Shoe Company were substantially one concern and that a price agreement then in force applied to both concerns.

July 1, 1912. *Final decree* entered dismissing bill with costs.

WALTER J. GROSVENOR *v.* JAMES T. MORIARTY. 18133 EQ.

May 13, 1912. *Bill* filed alleging a sympathetic strike by members of the American Brotherhood of Cement, Artificial Stone, and Asphalt Workers, Local Union No. 20, employees of the complainant (who was fulfilling a contract with the George A. Fuller Company relative to the construction of floors in the new Copley Plaza Hotel in Boston). Members of the International Association of the Steam Fitters, the International Hod Carriers and Building Laborers Union of America, Local No. 209, and members of the Building Trades Council of the Building Trades Department, American Federation of Labor, also joined in the strike to compel the Fuller Company to discharge, against its will, all members of the International Association of Steam Fitters working on the said building.

May 17, 1912. *Writ of injunction* issued restraining the continuance of the existing strike. But the employees of the respondent were not ordered to resume any work they had left or to leave any work at which they were engaged.

SETH W. FULLER CO., INC. *v.* JOHN W. BARTON *et als.* 19420 EQ.

December 21, 1912. *Bill* filed alleging a conspiracy by certain officers and members of the Electrical Workers' Union No. 103, in calling a strike of union men in the employ of the complainant until he discharge all non-union men. Prayers that they be restrained from so conspiring; from threats and intimidation of the complainant's employees and other coercive measures; from picketing the complainant's place of business; and for other similar relief.

December 27, 1912. *Interlocutory decree* and *temporary injunction* entered restraining the respondents from doing the acts complained of.

JOHN CORNELLIER *v.* HAVERHILL SHOE MANUFACTURERS ASSOCIATION *et als.* 19606 EQ.

January 25, 1913. *Bill* filed stating that the complainant being a member of the Cutters' Union of Haverhill, Local No. 63, went on a strike with other union men because the respondents would not increase their wages, and alleging that thereafter the complainant was blacklisted by all the manufacturers belonging to the above-named association, and was discharged since the strike because of the said blacklist. Prayers asking that the court order that said blacklists be destroyed by respondents and damages be assessed.

April 10, 1913. *Master's report* filed.

December 30, 1913. *Final decree* entered dismissing the bill, but reporting the case for the consideration of the whole court.

(See the decision of the Supreme Judicial Court for the Commonwealth in this case, 221 Mass. 554, *ante*, page 179.)

WILLIAM H. HOBAN *et ali.* *v.* WILLIAM F. DEMPSEY *et als.* 19688 EQ.

February 25, 1913. *Bill* filed alleging a conspiracy by the defendants to compel the members of the complainants' union to join the respondents' unions by inducing the Trans-Atlantic Steamship Conference to enter into a contract with the respondents not to employ as longshoremen persons not members of the respondents' unions, thereby losing all benefits of the complainants' union. Prayers for an injunction restraining any further carrying out of the said contract; compelling the respondents to desist from endeavoring to destroy the complainants' union; and for other relief.

March 7, 1913. *Final decree* entered dismissing the bill.

March 14, 1913. *Appeal* to Supreme Judicial Court for the Commonwealth filed.

(See the decision of the Supreme Judicial Court for the Commonwealth in this case, 217 Mass. 166, *ante*, page 155.)

MACDONALD & JOSLIN CO. *v.* AUGUSTINE J. HOWLETT *et als.* 19704 EQ.

March 7, 1913. *Bill* filed alleging that the respondents threatened and did actually call a strike of the complainant's union employees, because the complainant was employing certain non-union men. Prayers asking that the respondents be permanently restrained from continuing such a strike and from so conspiring as alleged. There were also prayers for a mandatory injunction recalling and rescinding any orders to strike sent to union men.

JAMES MCHALE *v.* LAWRENCE C. CANNON AND PATRICK WELCH. 19876 EQ.

April 25, 1913. *Bill* filed alleging that a strike of the complainant's employees, who were members of the Bricklayers' Unions Nos. 3 and 27 of Boston, and of Stone Layer's Union No. 9 of Boston, had taken place, and alleging a conspiracy by the respondents in calling a strike to cripple the complainant's business. Prayers for an injunction restraining the respondents from so conspiring, or intimidating, or annoying the complainant's employees.

May 22, 1913. *Master's report* filed with findings of the following facts: That the respondents were acting in official capacities for the unions; that they acted with the sole motive of enforcing the rules of their unions; and to stop infractions of the same by the complainant.

October 28, 1913. *Final decree* entered dismissing the bill.

NEW ENGLAND CEMENT GUN CO. *v.* EDWARD J. MCGIVERN *et als.* 20504 EQ.

May 29, 1913. *Bill* filed. (See the decision of the Supreme Judicial Court for the Commonwealth in this case, 218 Mass. 198, *ante*, page 165.)

THE ABERTHAW CONSTRUCTION CO. *v.* SEYMOUR COFFIN *et als.* 20990 EQ.

October 10, 1913. *Bill* filed alleging a conspiracy on the part of the respondents in calling a strike of union men working for other contractors as well as the complainant company thereby to compel the Commonwealth Ice and Cold Storage Company to break its contract relating to the construction of a certain portion of the said building, unless the said complainant discharged all its non-union men. Prayers for an injunction restraining the respondents from proceeding with the said strike; from conspiring to unionize the complainant's business; and for other relief.

October 15, 1913. *Temporary injunction* issued as prayed for in the bill.

WILLIAM LESLIE *v.* IGNATIUS MCNULTY *et als.* 22654 EQ.

September 11, 1914. *Bill* filed alleging that the complainant is engaged in the business of installing composition floors and walls in buildings; that certain funds belonging to the Cement Workers' Union No. 20 have been so placed that the complainant is unable to attach the same in an action at law; and that the respondents threaten to call a strike of the complainant's employees unless he discharge two workmen who claim to be members of the said union; and that the respondents conspired to compel the complainant to discharge the said workmen by actually calling a strike and threaten to drop the complainant's name from the next issue of their "fair list;" that a sympathetic strike is threatened; that continuance of the said acts will ruin the complainant's business. Prayers for an injunction restraining the respondents from continuing the acts alleged in the bill.

MICHAEL J. TRACEY *et al. v.* ROBERT O. OSBORNE *et als.* 24505 EQ.

September 20, 1915. *Bill* filed by the complainants in behalf of the United Shoe Workers of America against the respondents, as officers and members of the Lasters' Protective Union of Lynn, alleging that the United Shoe Workers of America entered into agreements relative to hours of labor and wages with a large number of shoe manufacturers for a minimum period of one year, but were to continue indefinitely unless active measures were taken by the parties thereto to abrogate them, all of which were still in force at the time of filing of the bill. Allegations then followed of conspiracy on the part of the respondents to violate the aforesaid agreements and to induce other members of the United Shoe Workers' Union also to do so, and that in pursuance of the said conspiracy formed or caused to be formed, illegally and in violation of the agreements, the Lasters' Protective Union of Lynn, also attempted to induce many employers who were parties to the above-mentioned agreements to break the same and enter into other agreements with the said Lasters' Protective Union; that the respondents are continuing and intend to continue their unlawful conduct; that the respondents have also threatened employers that if they did not violate the said agreements and enter into new ones with the Lasters' Protective Union, the respondents would call a strike; threats also that they would cause trouble in the factories; that irreparable injury would result therefrom, and that there is no adequate remedy at law. Injunction prayed for restraining the respondents, their agents, and servants from violating their agreements and from doing any act whatsoever tending to cause a violation thereof by

any of the parties thereto; that damages be assessed; and for other relief. The respondents answered on October 21, 1915.

December 10, 1915. *Ad interim injunction* issued.

December 13, 1915. *Temporary injunction* issued.

March 9, 1916. *Master's report* filed.

March 28, 1916. *Interlocutory decree* entered overruling the respondents' exceptions to the master's report.

April 14, 1916. *Final decree* entered ordering a permanent injunction to issue restraining the respondents from breaking their agreement as set forth in the bill and "more particularly for such purposes, from calling or causing any strike in any of the factories or shops where the said agreement is in force; and that the complainants recover costs taxed in the sum of $56.88." . . .

April 11, 1916. *Objections by the respondents to the final decree* filed.

May 1, 1916. *Appeal by the respondents to the full court* filed.

MICHAEL H. LEONARD *et al. v.* MICHAEL J. TRACEY *et als.* 24985 EQ.

December 22, 1915. *Bill* filed by the complainants in behalf of the Lasters' Protective Union of Lynn against the respondents as representatives of the United Shoe Workers' Union of America alleging that the complainants were, prior to August 18, 1915, members of the respondents' union, in the Lasters' Local Union No. 1; that the charter thereof was revoked by the respondents without any right and in violation of the constitution of the United Shoe Workers' Union of America, whereupon the complainants formed an independent association, called the Lasters' Protective Union, for the benefit of those employed at the trade of lasting shoes in Lynn; that the respondents conspired to injure and ruin the complainants in preventing them from earning a livelihood at their occupations, and did in pursuance thereof maliciously notify several shoe manufacturers, who employed many of the complainants, that the complainants were not members of the respondents' union, and thereby to induce the said employers to discharge the complainants. There were also allegations of threats and intimidations to compel men to join their association; that they are threatening employers of the complainants to call strikes, unless they refrain from employing members of the complainants' union. Prayers for an injunction restraining the respondents from doing or continuing to do any of the acts alleged in the bill. The respondents answered on December 31, 1915, and amended their answer on January 2, 1916.

December 29, 1915. *Stipulation* filed by consent whereby the respondents agreed, until further order of court, that no action of any kind would be taken by them or any of them to prevent any of the complainants from obtaining work or from continuing at work in any factory in Lynn with which the United Shoe Workers of America have not written agreements.

May 13, 1916. *Master's report* filed setting out in detail the relations of the parties with regard to their industrial disputes before and at the time of filing of the bill; that prior to the institution of the suit there had been a "Peace Pact," so-called, signed for the purpose of promoting industrial peace in the future among shoe workers, unions, and others; that later the complainants entered opposition to certain parts of the said "Peace Pact." Later, it was found, the charter of the Lasters' Local Union was revoked; that the complainants made attempts to appeal from the action revoking the charter, without success, resulting in the organization of the Lasters' Protective Union

by the complainants. Its aims are set out in full. The master found also, among other things: (1) That the charter of the Lasters' Local No. 1 was not revoked by the respondents without right or in violation of the constitution of the United Shoe Workers of America, but within the terms thereof; (2) that the complainants' constitutional right of appeal was not denied them, but that they failed to exercise their rights in accordance with the constitution; (3) that there was no conspiracy of the respondents as alleged in the bill, to the effect that the respondents had conspired to deprive the complainants of working at their respective occupations; (4) that there was no conspiracy by the respondents to force or even induce any employers to discharge members of the complainant organization from their employment or not to hire them; (5) that they did not conspire or use threats or intimidations to get any of the complainants to join their, the respondents', association; (6) that it was not shown that the complainants, or any of them, had ever threatened any employers to the effect that if they employed or continued to employ any of the complainants there would be trouble or strikes in their factories, nor was there any evidence that they had used any unlawful means to prevent the complainants from securing employment which they otherwise might have had.

Bristol County.

SUPERIOR COURT.

The following cases may be of interest as showing the action of the court in cases where an injunction was sought restraining employees from divulging trade secrets and using customers' lists in violation of their written contracts: *Perfection Laundry, Inc.* v. *Surprenant et al.*, 476 Eq.; *George H. Morse* v. *A. A. Davis*, 330 Eq.; *Adelarde Surette* v. *Allaire Laundry*, 247 Eq.; *Samuel Morris et al.* v. *Dorsla Gogette*, 460 Eq. As to an alleged misuse of a trade mark, *see* the case of *Dupuis* v. *Miller*, 491 Eq.

Essex County.

SUPERIOR COURT.

In the following cases (treated in a previous Labor Bulletin, No. 70) the bills were dismissed in open court without costs, on December 23, 1910: *Johnson L. Walker et al.* v. *Alexander S. Clark et als.*, 212 Eq.; *Augustus A. Hennessey et al.* v. *John Delaney et als.*, 232 Eq.; *Emerson Manufacturing Co.* v. *James Benson et als.*, 246 Eq.; *Chauncey W. Dodge et al.* v. *John Whitney et al.*, 420 Eq.

Randall Adams Co. *v.* Michael J. Tracey *et als.* 685 Eq.

January 13, 1911. *Bill* filed alleging a conspiracy entered into by the respondents, who were officials of the Lasters' Union, Local No. 1 and several other local unions, together with officials of the United Shoe Workers' Union of America, to injure and ruin the complainant in its business, and in pursuance thereof did call a strike of the union men in the complainant's employ because the complainant refused to discharge a workman who was satisfactory to the company, or compel the said workman to discharge another workman in the latter's employ. There were also allegations of attempts to report the complainant as "unfair" and place its name on the "unfair list," so-called, for the purpose of preventing the complainant from obtaining new workmen. Prayers

for a preliminary injunction restraining the respondents from interfering with the complainant in its business; from calling or causing strikes to take place among its workmen; from continuing such strikes as were at the time in force; from hindering persons from remaining in or entering into the employ of the complainant; from doing any of the acts alleged in the bill for the purpose of compelling the complainant to discharge the workman in question or any others; from reporting the complainant as "unfair" or from placing its name on any "unfair list," so-called; that the complainant be awarded damages, etc.

February 25, 1911. The respondents answered, setting out, among other things, the fact that the shop's crew of the complainant held an independent meeting at which they decided not to work for the complainant as long as it permitted one of its lasters to employ a helper, thereby enabling the said laster to obtain an unfair and larger share of the work than other lasters. The answer also contained denials of conspiracy, etc.; or that a strike was called by the unions named; or that the company was placed on the "unfair list," so-called. Several other denials and also some admissions are therein contained.

December 18, 1911. *Final decree* entered by consent dismissing the bill with costs of $23.44.

The questions involved in this case were taken up to the Supreme Judicial Court for the Commonwealth from Suffolk County by appeals in the cases of *Minasian* v. *Osborne*, 7853 Eq. and 7854 Eq. (For the decisions by the whole court in the above cases, see 210 Mass. 250, *ante*, page 143.)

DONABED MUKIJIAN *v.* MICHAEL J. TRACEY *et als.* 698 EQ.

March 6, 1911. *Bill* filed alleging a conspiracy on the part of the respondents, as officials of the Lasters' Union of Lynn, Local No. 1, and of the United Shoe Workers of America, to deprive the complainant of earning a livelihood as a laster because he will not become a member of either of the said organizations; and that the employers have been warned, under threats of strikes, not to employ the complainant; that the complainant had suffered great damage thereby. Prayers for an injunction, *pendente lite*, restraining the respondents from continuing, or threatening to do in the future, any of the acts alleged in the bill, and that damages be awarded. The respondents answered on March 13, 1911, and later amended by adding a demurrer.

April 6, 1911. *Memorandum of findings* filed by the court, that the two unions named, by reason of union contracts, control the major part of the boot and shoe market; that these contracts contained no stipulations that the men employed should be union men but that employers felt that they should not act at cross purposes with the said unions; that the complainant, after an absence from Lynn for five years, wished to become a member of the local branch of the respondent union and, for no good reason, he was put off and finally rejected. He applied for work, obtained it, and was discharged for not having a union card, and this at the instance of the respondents. The memorandum stated that an injunction should issue restraining the respondents from obstructing the complainant from obtaining employment.

May 5, 1911. *Final decree* entered restraining the respondents from obstructing the complainant in obtaining or retaining employment; that the complainant be given damages of $200 and that execution issue for costs of $85.67.

June 27, 1911. *Execution* issued returned as satisfied.

COMMONWEALTH *v.* WALTER M. LIBBEY. 10522 CR. LAW.

COMMONWEALTH *v.* J. F. CRANE. 10523 CR. LAW.

January 10, 1913. *Complaint* entered in the District Court of South Essex. The defendant was found guilty of violating Acts, 1910, c. 445, making it illegal to advertise publicly "in newspapers, or by posters or otherwise, for employees" during a strike, except under certain conditions.

January 14, 1913. *Motion to quash* filed and on the same day overruled. The defendant thereupon appealed to the Superior Court in Suffolk County, filed on the first Monday of February, 1913. The jury returned a verdict of guilty.

May 25, 1913. *Bill of exceptions* filed by the defendant, raising the question of the constitutionality of the statute.

January 12, 1914. *Rescript* from the Supreme Judicial Court for the Commonwealth filed overruling the defendant's exceptions.

(For the decision by the Supreme Judicial Court for the Commonwealth in this case, see 216 Mass. 356, *ante*, page 151.)

EDWARD P. WILLIAMS *v.* WILLARD F. COLLINS *et als.* 1005 EQ.

May 5, 1913. *Bill* filed alleging that the complainant is a mechanic and musician and, that because he would not become a member of the respondents' voluntary organization of musicians, the said respondents sought to prevent its members from hiring the complainant as a mechanic by passing resolutions ordering that the said members refrain from so doing under penalty of being fined. Prayers for an injunction restraining the respondents from doing or continuing the acts alleged in the bill. The respondents answered on May 21, 1913.

September 22, 1913. *Master's report* filed setting out the facts substantially as alleged in the bill and that the acts of the respondents were concerted attempts to harass the complainant by preventing him from securing employment and to coerce the members of the organization.

December 15, 1913. *Final decree* entered ordering the respondents to refrain from interfering with the complainant's business as mechanic or musician by threats, intimidations, or coercion, from interfering with his employment, or preventing persons from hiring him.

EDWIN R. FAIRBANKS *v.* JOHN F. RIGNEY. 1036 EQ.

July 15, 1913. *Bill* filed alleging that the complainant is Master Workman of the Boot and Shoe Cutters' Assembly, Local No. 3662 of the order of Knights of Labor, a subordinate branch of the National Boot and Shoe Cutters' Assembly; that the latter is also a subordinate branch of the General Association of the order of Knights of Labor; that the respondents with other members of Local No. 3662 conspired to disrupt and disband it by voting at a regular meeting to wind up its affairs; that a collusive agreement was in existence, the main purpose of which was to deprive the said local of its property by a resolve to be passed at a meeting of the said local. Prayers for an injunction restraining the respondents from disposing of the said property; from doing any other acts contained in the bill; that the injunction be made permanent;

and that damages be assessed. All the respondents but one answered on October 10, 1913. A demurrer was filed on August 9, 1913.

July 15, 1913. *Ad interim injunction* issued restraining the respondents from doing or continuing to do any of the acts alleged in the bill.

CENTRAL AMUSEMENT CO. *v.* THEATRICAL STAGE EMPLOYEES' UNION, LOCAL NO. 73. 1071 EQ.

October 17, 1913. *Bill* filed alleging the parading of the respondents in front of the complainant's theatre; the carrying of a banner bearing the following inscription "Central Square Theatre. Unfair to organized Labor," with a view to preventing persons from patronizing the said theatre, because the said complainant refused to accept certain propositions (not stated) relative to employment of labor; and that the patronage had fallen off at the theatre at Lynn to the great damage of the complainant. Prayers for an injunction restraining the respondents from continuing the acts alleged in the bill. Certain additions by amendment were made to the bill later, including allegations of inducements to terminate contracts of the company's employees, intimidations, etc. The respondents answered on November 26, 1913.

June 18, 1914. *Master's report* filed finding, among other things, that the trouble arose because the complainants discharged three men, one of whom was a representative of the said union; that the theatre had, just previous to their discharge, been turned into a moving picture theatre, and that therefore the men's services were no longer needed; that later the complainant, when necessary employed a non-union man instead of a union man, whereupon the parading alleged in the bill took place; that the complainant had a banner displayed in retaliation, stating that claims by the respondents that only "grafters" maintained the theatre, were unfair; that there were no threats, no intimidations, and no direct evidence that the patronage of the theatre was affected thereby. There were a sufficient number of men employed at all times for the safety of the patrons.

EDWIN R. FAIRBANKS *et ali. v.* WILLIAM C. MCDONALD *et als.* 1114 EQ.

February 24, 1914. *Bill* filed alleging a conspiracy on the part of the respondents, officers, and members of the Boot and Shoe Cutters' Assembly, Local No. 62 of Lynn, which was affiliated with the United Shoe Workers' Organization of America, to injure and ruin the complainants in their business as shoe workers and prevent them from earning a livelihood for the purpose of forcing them to join the said Boot and Shoe Cutters' Assembly, Local No. 62; that they have threatened employees of the complainants to call strikes — finally calling a strike — and to cause other trouble if the said employers continued to employ the employees of the complainants, or unless they compelled the complainants to join the respondents' union; that some of the complainants have been, for the above reasons, discharged, and are being prevented from regaining their former positions. Prayers for an injunction, *pendente lite*, restraining the respondents from continuing the acts alleged in the bill; that the injunction be made permanent; and that the respondents be ordered to pay such damages as the court might award. The respondents answered on March 3, 1914.

May 5, 1914. *Master's report* filed.

July 11, 1914. *Final decree* entered confirming the master's report and ordering a

permanent injunction to issue restraining the respondents, with the exception of one, from continuing the acts alleged in the bill.

July 18, 1914. *Appeal of the respondents* filed.

(See also the decision of the Supreme Judicial Court for the Commonwealth in this case, 219 Mass. 291, *ante*, page 174.)

HODGDON-DURAND CO. *v.* MICHAEL J. TRACEY *et als.* 1127 EQ.

March 27, 1914. *Bill* filed alleging a strike in progress among certain of the complainant's employees, who were members of various local shoe workers' unions, as well as the United Shoe Workers of America, resulting from a conspiracy on the part of the respondents to compel the complainant to accede to certain demands of the said unions; that since the beginning of the strike unlawful persuasions and inducements, by payment of money, railroad tickets, etc., have been used in order to cause the remaining employees to cease working for the complainant. There were also allegations of congregation of crowds in front of the company's place of business, threats, intimidation of workmen, etc., picketing and patrolling of the streets in and around the company's shops. Prayers for an injunction restraining the respondents from continuing the acts alleged in the bill. The respondents answered on April 2, 1914.

May 26, 1914. *Master's report* filed finding, among other things, that the complainant and the Boot and Shoe Workers' Union entered into a written agreement with reference to wages, hours, and use of the union label; that thereafter the company refused to accept a certain price list of the respondent unions, resulting in the calling of the strike and justified by the respondents on the ground that they did not recognize the Boot and Shoe Workers' Union or any regulations or agreements as to wages and hours made or entered into by it; that the strikers were paid certain amounts weekly and were expected to do picket duty; that there were threats, intimidations, etc., resulting in some of the other men leaving their work.

June 19, 1914. *Master's supplemental report* filed adding certain other findings of facts immaterial to the general issues.

JAMES W. M. HARVEY *v.* WALTER CHAPMAN *et als.* 1375 EQ.

October 11, 1915. *Bill* filed alleging that the respondents, as officers and members of the Lynn Grocery and Provision Clerks' Association, patrolled the complainant's place of business bearing placards reading substantially as follows: "Friends of Organized Labor, Patronize Stores Displaying this Union Card," etc.; that they picketed his store, and were inducing persons not to patronize him because a strike of his clerks had taken place. The bill also alleged the cause of the trouble as being a refusal by the complainant to discharge non-union men; but that no strike had taken place. Prayers for the usual injunctions. The respondents filed a demurrer and answer on October 18, 1915.

[Date not legible.] *Master's report* filed, finding among other things, that a strike was called on account of the complainant's retaining non-union men, but that the complainant was not notified of the calling of the said strike; that the respondents published, as alleged, that the store was "unfair;" that none of the complainant's men went on a strike, and that no strike was in existence as to the complainant's store.

DAVID SHINSKY *v.* MICHAEL J. TRACEY *et als.* 1380 EQ.

November 15, 1915. *Bill* filed alleging that the complainant, prior to the acts complained of, had been employed in a certain factory for eight years as a laster; that the respondents are officers and members of the voluntary associations known as the United Shoe Workers of America and the Lasters' Local Union No. 1; that prior to September, 1915, the complainant had been a member of both of the unions mentioned above; that some time in May, 1915, the respondents conspired to ruin the complainant by depriving him of earning a livelihood; that certain of the respondents, in pursuance of such conspiracy, made charges against the complainant, and after pretending to give him a hearing, declared him suspended and later expelled him from the United Shoe Workers of America; that in further pursuance thereof, the respondents sent word to his, the complainant's, employers, that he must be discharged because he was no longer a member of the Shoe Workers of America; that refusal to discharge him would result in trouble for the said employers; and that the said respondents did likewise, with regard to other shoe manufacturers who might employ the complainant; that the complainant did, however, secure employment at another factory but was discharged for the above reasons. Prayers for an injunction restraining the respondents from conspiring to interfere or interfering in any way with the complainant in obtaining or continuing in employment or from intimidating or threatening persons who desired to employ him; that damages be assessed; and for other relief. All the respondents answered.

January 26, 1916. *Master's report* filed finding, among other things, the following facts: That the complainant's expulsion from the United Shoe Workers of America, being in accordance with the constitution thereof, was legal, but that the respondents also intended to punish the complainant for purposes of discipline and to this end caused the sending of the letters addressed to various employers not to employ the complainant; that the complainant's employers discharged him on account of fear of trouble with the union and not because his work was unsatisfactory; that the said employers at the time were under contract to employ none but members of the United Shoe Workers of America so long as they could supply them with men; that continuing to employ the complainant by either of his employers would be a violation of their contracts with the association; and that his discharge was a compliance with the union contract; that employers having "Peace Pact" agreements, so-called, have been induced to break the said contracts by the Lasters' Protective Union, a new union organized in opposition to the United Shoe Workers of America, of which the complainant is a member; that if existing circumstances continue, the complainant will be unable to obtain employment in at least 90 per cent of the shoe factories in Lynn in which the labor is controlled by the United Shoe Workers of America; and that it is highly improbable that he will be able to secure or retain employment in the other 10 per cent.

April 20, 1916. *Memorandum by the court* filed finding, among other things, that the complainant's activities and membership in the local union resulted in his expulsion from the United Shoe Workers of America; that he was discharged by his employer in conformity with his contract with the said association, known as a "Peace Pact;" that such a contract was legal, however, and that the bill, therefore,

must be dismissed, but without costs. The exceptions to the master's report were overruled.

April 28, 1916. *Interlocutory decree* entered confirming the master's report.

April 28, 1916. *Final decree* entered dismissing the bill without costs.

May 1, 1916. *Plaintiff's appeal* to the full bench of the Supreme Court filed.

HENRY H. MOORE *v.* ARTHUR M. HUDDELL *et als.* 1410 Eq.

January 7, 1916. *Bill* filed alleging that the complainant and respondents are members of the Hoisting and Portable Engineers' Association No. 4; that the respondent, Huddell, as a walking delegate of the union, and with its authority, together with other respondents, caused the discharge of the complainant as hoisting engineer for one Wilson with whom he was under contract and for whom he was performing his work satisfactorily; that the complainant's employer discharged the said complainant because of the inducements, threats of violence, and statements of the respondents that they would call a strike of the employer's workmen unless the complainant was discharged; that the respondents' union has, through its officers and agents, prevented the complainant from securing other employment as hoisting engineer; that they intend to continue all of the acts alleged. Prayers for a temporary injunction restraining the respondents, their committees or agents, from interfering with the employment of the complainant by threats, intimidations to employers, or otherwise, or by doing anything which will tend to hinder the complainant from securing or continuing in employment. The case was referred to a master on January 12, 1916. The respondents answered on January 28, 1916. They also filed a demurrer on January 31, 1916.

In the following cases an injunction was sought restraining employers from going into the same business either independently or in the employ of others within a certain limited distance of the employer's place of business or within a certain period of time in violation of their agreements: *Max Lappan* v. *Alexander Kalewctz*, 883 Eq.; *Louis F. Rowerman* v. *James Kanopka*, 902 Eq.; *David Hook et al.* v. *Sam Alexeichuk*, 931 Eq.; *Quong Wah* v. *Sadie L. Bessie et al.*, 986 Eq.; *Mass. Window Cleaning Co.* v. *Anton Miller*, *Bill* filed December 11, 1913 (number omitted); *Peter Tzatzos and Stregzos Tzatzos* v. *John Lathuros*, 1162 Eq.; *Garabed Apkarian* v. *Harootoon Toohlouian*, 1178 Eq.; *Arthur E. Parsons* v. *Henry E. Capon*, 1186 Eq.; *George Milonas* v. *George Koures*, 1196 Eq.; *Leon Bakanosky et al.* v. *John Finenco*, 1226 Eq.; *Nathan Maron* v. *Philip Cohen*, 1250 Eq.; *H. P. Hood & Sons* v. *Everett A. Gould*, 1307 Eq.; *H. P. Hood & Sons* v. *Raymond E. Moore*, 1308 Eq.; *Zuma Zilfoo* v. *Charles Peterson*, 1355 Eq.; *Daniel Gogarian* v. *Hgop Terzian*, 1378 Eq.

The following cases concerned disputes relative to the custody of funds, papers, and other personalty of various unions, and prayers were asked in each case restraining the transfer, disposal, or concealment of the same: *Michael J. Tracey* v. *John Gubus*, 834 Eq.; *Michael F. Meagher* v. *John F. Rigney et als.*, 966 Eq.

Franklin County.

SUPERIOR COURT.

THE CONNECTICUT VALLEY STREET RAILWAY CO. *v.* LOCAL UNION NO. 552 OF THE AMALGAMATED ASSOCIATION OF THE STREET AND ELECTRIC RAILWAY EMPLOYEES OF AMERICA *et als.* 3264 EQ.

March 30, 1911. *Bill* filed alleging a conspiracy on the part of the respondents as officials of the respondent union to injure the complainant in its business by calling a strike of the employees of the complainant company thereby intending to compel the said company to re-employ certain former employees. There were also allegations of use by the respondents of abusive language, of threats to men who remained at work, and of inducements directed to them to break their contracts of employment with the company, as well as allegations of trespassing on the company's property, interference with cars thereby causing inconvenience for the public, the cutting of wires, the blockading of cars at night time, and other acts tending toward preventing the company from conducting its business. Usual prayers for an injunction restraining the respondents from continuing to interfere with the complainant's business, or conspiring to do so, or continuing any other acts mentioned in the bill, as well as a prayer that damages be assessed. The respondents answered on April 11, 1911.

April 11, 1911. *Motion for specifications* filed by the respondents.

April 11, 1911. *Specifications* filed setting forth the times and places and nature of the various trespasses, intimidations, use of abusive language, cutting of wires, etc.

May 13, 1911. *Stipulation* filed according to which the respondents agreed not to violate any of the stipulations contained in the prayers of the complainant's bill.

May 17, 1911. *Master's report* filed mentioning the filing of the above stated stipulation, and discontinuing the hearing on that account, till further order of court.

F. MARTINEAU *et al. v.* DANIEL FOLEY *et als.* 3852 LAW.

September 7, 1915. *Declaration* filed alleging a conspiracy on the part of the defendants, as officials of the Bricklayers' and Plasterers' Union, No. 36, to injure the plaintiff in their business as contractors by circulating a letter notifying all union contractors not to do work for, or let out for hire to the plaintiffs any masons, as the plaintiffs had been employing non-union masons. The defendants filed a demurrer, plea in abatement, an answer, and motion to dismiss on October 2, 1915.

April 3, 1916. *Bond to dissolve attachment* filed.

Hampden County.

SUPERIOR COURT.

AUGUSTUS A. PARISEAU *et ali. v.* GEORGE F. PEARSON *et als.* 5635 LAW.

Additional proceedings in the above case since the issuance of Labor Bulletin No. 70 on this subject are the following:

November 15, 1909. *Stipulation* filed, by consent, the parties thereto agreeing that the injunction being dissolved, etc., no further attempt would be made by the respondents to collect any portion of said fines or suspend the complainants, until

they had opportunity to be heard before the American Federation of Musicians upon the complainants perfecting their appeal as provided in the constitution and by-laws.

January 23, 1910. *Final decree* entered dismissing the bill without costs.

FRED G. BURNHAM *et al. v.* EDWARD F. DOWD *et als.* 8346 Eq.

February 19, 1913. *Bill* filed alleging a conspiracy on the part of the respondents, officials and members of the Bricklayers' and Plasterers' Union, Local No. 2 of Holyoke, to ruin the complainants' business, as dealers in flour, grain, and masons' supplies; that they placed the complainants' names on the unfair list, so called; that they had boycotted the said business by inducing, and even threatening, other union men, contractors, and property owners not to deal with the complainants, under penalty of refusal by the respondents to work for the said persons, and by threatening to call a strike of the union men in the employ of the said contractors and others unless they comply with the respondents' demands. Prayers for an injunction restraining the respondents from doing or continuing to do any of the acts alleged in the bill. The respondents answered on March 20, 1913.

July 15, 1913. *Special Masters'* report filed.

September 15, 1913. *Stipulation* entered by consent overruling the exceptions to the masters' report and confirming the facts, found as therein stated, holding the case upon reversal, for determination by the Supreme Judicial Court for the Commonwealth.

March 31, 1914. *Rescript from the Supreme Judicial Court* filed, enjoining the respondents from keeping the complainants' name on the "unfair list," so-called, from threatening to strike or leave work of any owner, builder or contractor by reason of such person having purchased supplies from the complainants, etc., and allowing the complainants to recover costs of $500 with interest.

April 21, 1913. *Final decree* entered confirming the rescript.

(See the decision of the Supreme Judicial Court for the Commonwealth in this case; 217 Mass. 351, *ante*, page 159.)

AMEDEE ROBERT *et ali. v.* TIMOTHY T. GRIFFIN *et als.* 11266 Eq.

January 24, 1916. *Bill* filed alleging a conspiracy on the part of the respondents, as officials of the Cigar Makers' Union, Local No. 51 of Holyoke, to ruin the complainants in their business as cigar makers; that the said respondents have placed the complainants' names on the "unfair list," so-called, and have by threats and coercion prevented merchants selling cigars from dealing with the complainants; that cards have been distributed advertising in substance the following: "Do not purchase non-union made cigars or the Roberts Cigar Co.'s cigars, which company is unfair to union labor." Prayers for an injunction restraining the respondents from continuing the acts alleged in the bill. The respondents answered on January 28, 1916.

January 29, 1916. *Motion to amend* and *amended bill* filed adding only technical and non-substantial changes to the original bill.

The following cases are of interest as showing the action of the court where an injunction was sought restraining employees from divulging trade secrets or using customers' lists in violation of their written contracts: *John E. McCarthy et al.* v. *David S. Henry et als.*, 10103 Eq.; *John E. McCarthy et al.* v. *Gideon LaMay et al.*, 9329 Eq. For cases involving the right of custody of funds of a union or lodge, see

Nilo A. Bryant et ali. v. *Henry A. Sherman*, 7562 Eq. and 8521 Eq. For a case involving the right to recover a death benefit by the wife of a deceased member of a labor union, see *Hattie E. Bates* v. *The Cigar Makers' Local Union, No. 28 of Westfield, et als.*, 9543 Eq.

Middlesex County.

SUPERIOR COURT.

The following cases are of interest as showing the action of the court where an injunction was sought restraining employees from divulging trade secrets or using customers' lists in violation of their written contracts: *Herbert F. Staples* v. *James F. Wells*, 2295 Eq.; *Charles S. Russell* v. *Roderick McLean*, 2486 Eq.; *Malden Laundry Co.* v. *Herbert H. Davis*, 2578 Eq.; *William C. Mahany* v. *Herbert H. Kenney et al.*, 2708 Eq.; *Malden Laundry Co.* v. *Bean et al.*, 2818 Eq.

Norfolk County.

SUPERIOR COURT.

ALEXANDER S. WHITING *v.* THE BOOT AND SHOE WORKERS' UNION. 3987 LAW.[1]

October 1, 1910. *Amended declaration* filed by consent adding another count in which the plaintiff alleged that he had been prevented from retaining his position, due to the organizing of the defendant union, resulting in the unionizing of his employer's shop; that he had made application for membership to the said union previous to his discharge, and that his application had been accepted; that thereafter the officials mentioned as defendants, conspired to prevent him from becoming a member thereof by imposing a fine of $500 upon him, when the regular fee was but $1, thereby preventing him from becoming a union employee and from obtaining employment at his trade as a shoe-worker.

JOHN N. BRION *v.* P. T. POWERS *et als.*[2] 5811 EQ.

March 6, 1909. *Bill* filed alleging that the complainant was a building contractor and that the respondents, as officials of carpenters', bricklayers' and plasterers' local unions, unlawfully conspired to injure the complainant in his business, unless he should run a "closed shop;" that the same threats and conspiracy were directed against all persons, having contracts with the complainant, to break the said contracts; that fines would be levied upon all the employees of such persons unless such contracts were not broken and such employees did not strike upon the request of the respondents. Allegations that the complainant's name had been placed on the "unfair list." Prayers for an injunction restraining the respondents from doing or continuing any of the acts alleged in the bill.

Suffolk County.

SUPERIOR COURT.

LUCIUS B. FOLSOM *et al.* v. GEORGE F. LEWIS *et als.* 7527 EQ.

July 21, 1910. *Bill* filed. (See the decision of the Supreme Judicial Court for the Commonwealth in this case, 208 Mass. 336, *ante*, page 141.)

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[1] For a summary of the earlier papers in this case, see *Labor Bulletin No. 70* issued by this Bureau in 1909 on the same subject.

[2] Omitted from *Labor Bulletin No. 70.*

M. Steinert & Sons Co. *v.* George F. Tagen *et als.* 7701 Eq.

October 20, 1910. *Bill* filed. (See the decision of the Supreme Judicial Court for the Commonwealth in this case, 207 Mass. 394, *ante*, page 133.)

Hampartzoon Minasian *v.* Robert L. Osborne *et als.* 7853 Eq.

Minas Minasian *v.* Same. 7854 Eq.

December 23, 1910. (See the decision of the Supreme Judicial Court for the Commonwealth in these cases, 210 Mass. 250, *ante*, page 143.)

The Simon Manufacturing Co. *v.* Barney Kaiser *et als.* 7927 Eq.

January 23, 1911. *Bill* filed alleging a conspiracy on the part of the respondents, officials of the Sheepskin Coat Makers' Union, Local No. 267, to compel the complainant to run a "closed shop;" picketing, and threatening of workmen under contract with bodily harm. Usual prayers for an injunction restraining the respondents from picketing, threatening workmen under contract as alleged; interfering with the complainant's business; from calling any strike or proceeding with any already called. Respondents answered on January 27, 1911.

February 1, 1911. *Final decree* entered by consent dismissing the bill without costs and without prejudice.

F. Brigham & Gregory Co. *v.* J. R. Oldham *et als.* 8054 Eq.

March 9, 1911. *Bill* filed alleging that a strike of the cutters in the complainant's employ was ordered and supported by the respondents, officers of the United Shoe Workers' Union of America, Locals Nos. 28 and 40, unless the complainant run a "closed shop;" that a sympathetic strike of the lasters in its employ was also initiated. There were also allegations of picketing, and intimidation of persons in and seeking the complainant's employ; also the circulation of an "unfair list," naming the complainant. Prayers for an injunction restraining the respondents from continuing the alleged acts. The respondents answered on March 22, 1911.

April 8, 1911. *Interlocutory decree* issued ordering a temporary injunction restraining the respondents from interfering with the complainant's business; from picketing; from intimidating or annoying employees; and from inducing workmen to break their contracts of employment.

April 20, 1911. *Petition for attachment for contempt* filed, alleging the violation of the injunction by certain defendants. For a summary of proceedings under the petition, *see* under "Cases of Contempt of Court," page 234.

May 2, 1911. *Memorandum of findings* filed stating that the respondents had an arguable cause for dissatisfaction with the terms under which they were employed; that the strike was instituted to compel concession to alleged just demands; that there was no "sympathetic strike," as such; that there was picketing and some inducements to persuade men not to enter the company's employ, but no evidence to show that the respondents instituted or supported the strike; and that since the issuance of the temporary injunction one respondent had violated the terms of the same. *See* also under Contempt Cases, page 234.

ABRAHAM KANTOR *v.* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL NO. 954, *et als.* 8090 EQ.

March 23, 1911. *Bill* filed alleging a strike of the carpenters in the employ of the complainant for refusal of the complainant to discharge a foreman, who, the respondents claimed, was a contractor; that the workmen were compelled to strike against their will, under threats of being fined; that a conspiracy existed to compel men under contract to leave their work, and to keep certain union men desirous of returning, from so doing. The respondents answered. Prayers for the usual injunctions against the continuance of the acts alleged in the bill.

March 29, 1911. *Final decree* entered by consent dismissing the bill without costs, and without prejudice.

SAMUEL SHIRLIF *v.* ELI FINKLESTEIN *et als.* 8102 EQ.

March 30, 1911. *Bill* filed alleging a conspiracy on the part of the respondents, who were members of the Cloak and Skirt Makers' Unions, Nos. 12, 56, and 72, to interfere with and deprive him of his right to employ and contract with whom he pleased, and to compel him, through fear, to discharge a workman; the calling of a strike of his union employees. There were the usual allegations of threats, intimidations, etc.; interference with the complainant's business; and that such acts constituted a nuisance. Prayers for an injunction restraining the respondents from continuing the acts alleged in the bill. The respondents answered.

June 26, 1911. *Interlocutory decree* entered by consent ordering a temporary injunction to issue restraining the respondents from interfering with the complainant's employees by threats, intimidations, etc., and by visiting his place of business.

CHARLES S. GOVE CO. *v.* EDMOND F. WARD *et als.* 8103 EQ.

March 30, 1911. *Bill* filed alleging a conspiracy on the part of the respondents, officials of the International Union, United Brewery Workers, and local unions, Nos. 14, 22, and 122, to call a strike of the complainant's employees, to place it on the "unfair list," to prevent customers from going to the complainant's place of business by picketing and by displaying on wagons, to be driven through the streets, certain false, malicious, and libelous cards, unless the said company signed a new contract with increased rates of wages, etc. Prayers for an injunction restraining the respondents from doing the acts alleged in the bill. The respondents answered.

March 30, 1911. *Ad interim injunction* issued as prayed for.

April 4, 1911. *Temporary injunction* issued restraining the respondents as prayed for in the bill.

April 14, 1911. *Reference to a master* with the following cases: *Cotter* v. *Ward et als.*, 8104 Eq.; *Coleman et al.* v. *Ward et als.*, 8105 Eq.; *Albrecht* v. *Ward et als.*, 8106 Eq.; *Stillman Bottling Co.* v. *Ward et als.*, 8107 Eq.; *Swartz* v. *Ward et als.*, 8108 Eq.; *Berkman* v. *Ward et als.*, 8109 Eq.; *Berry et al.* v. *Ward et als.*, 8110 Eq.

November 24, 1911. *Master's report* filed finding, among other things, the following facts: that the several complainants were wholesale liquor dealers; that the local unions, above named, were affiliated with the international union and the Central Union of Boston; that a contract relative to hours of labor and rates of wages between

the complainants and the said unions was about to terminate, and that new contracts with new provisions were being urged by the said officials; that practically all union men quit work when the company refused to sign these new contracts; that the evidence was conflicting as to whether or not the respondents called a strike; that the strikers were being paid about seven dollars each week by the said unions; that there were a few assaults of workmen by the strikers, resulting in convictions; some evidence of abusive and opprobrious language having been used by the respondents; and that posters stating what firms to patronize, and omitting the complainant's name therefrom were circulated.

December 14, 1911. *Final decree* entered confirming the master's report and granting a permanent injunction restraining the respondents as prayed for in the bill.

December 19, 1911. *Respondents' appeal* filed.

January 29, 1912. *Motion* filed praying that the appeal be dismissed and the final decree affirmed for failure to prosecute.

WILLIAM P. COTTER *v.* EDMOND F. WARD *et als.* 8104 EQ.

March 30, 1911. *Bill* filed substantially like that in *Gove* v. *Ward et als.*, 8103 Eq., except that in this bill it was alleged that a strike had been ordered and that the workmen had quit work on March 28, 1911.

In all other respects, including the issuance of injunctions, the entering of decrees and the filing of the master's report, this case is substantially the same as *Gove* v. *Ward et als.*, 8103 Eq., (*see* page 218).

In the following cases the bills, ad interim and temporary injunctions, master's report, final decrees and other action thereon are practically the same as found in *Gove* v. *Ward et als.*, 8103 Eq., (*see* page 218). *William Albrecht* v. *Edmond F. Ward et als.*, 8106 Eq.; *Stillman Bottling Co.* v. *Edmond F. Ward et als.*, 8107 Eq.; *Abraham Berkman* v. *Edmond F. Ward et als.*, 8109 Eq.; *Casper Berry et al.* v. *Edmond F. Ward et als.*, 8110 Eq.

In the following cases, the bill, ad interim injunction, and temporary injunction, are substantially the same as those in *Gove* v. *Ward et als.*, 8103 Eq., (*see* page 218), except that the final decrees, dismissing the bills in these cases, were entered by consent on June 5, 1911: *Michael C. Coleman et al.* v. *Edmond F. Ward et als.*, 8105 Eq.; *Harris Swartz* v. *Edmond F. Ward et als.*, 8108 Eq.

BON TON CLOAK AND SUIT MANUFACTURING CO. *v.* BENJAMIN HORN *et als.* 8114 EQ.

March 31, 1911. *Bill* filed alleging the ordering of a strike by the respondents of the complainant's employees, members of the Cloak and Skirt Makers' Union, Nos. 12 and 72, because the complainant refused to stop making, or to deliver up to the respondents, goods already made for another person upon whom the respondents had declared a strike; threats of bodily harm, should the complainant attempt to retain its employees' services; threats of the same nature to the employees should they remain at work; picketing, etc. Injunction prayed for restraining the respondents according to the prayers of the bill. The respondents answered.

April 26, 1911. *Temporary injunction* issued restraining the respondents in accordance with the prayers of the bill.

THOMAS SHUMSKI *v.* THE HOTEL AND RESTAURANT EMPLOYEES' INTERNATIONAL ALLIANCE AND BARTENDERS' INTERNATIONAL LEAGUE OF AMERICA, *et al.* 8134 EQ.

April 4, 1911. *Bill* filed alleging that the Boston Bartenders' Mutual and Benevolent Association, Local No. 77, is a branch of the respondent league; that the complainant became a member of the Bartenders' International Union, Local No. 355 of Yonkers, N. Y., a branch of the same league; that the complainant has come to Boston to reside, and has shown all necessary credentials for a transfer of membership, but has not been permitted to join the said Local No. 77, with the result that he can not obtain employment at his trade as a bartender; and that he has been promised employment upon becoming a member of the said Local No. 77. Prayers for an injunction ordering the respondents to accept the complainant as a member; and that he be awarded damages to date. The defendants answered on April 12, 1911.

April 28, 1911. *Memorandum of the court* filed in which the bill was ordered dismissed without costs on the ground that relief should be obtained at law or by writ of mandamus.

May 4, 1911. *Final decree* entered dismissing the bill without costs.

BON TON CLOAK AND SUIT MANUFACTURING CO. *v.* JAKE SPRINGSKY *et als.* 8159 EQ.

April 13, 1911. *Bill* filed substantially the same as that in the case of the *Bon Ton Cloak and Suit Manufacturing Co.* v. *Horn et als.*, 8114 Eq., (*see* page 219).

April 13, 1911. *Temporary injunction* issued as prayed for in the bill.

MAX SILVER *et al. v.* BERNARD RISEMAN *et als.* 8285 Eq.

May 26, 1911. *Bill* filed alleging a dispute to have arisen between the complainant with other master bakers and the Brewery and Confectionery Workers' International Union of America, Local No. 45. The respondents, officers of the said union, thereupon declared a general strike, which resulted in the complainant's hiring of non-union men; that thereafter the said officials conspired to injure the complainant's business by threats of bodily harm to workmen, and by publishing false statements as to the sanitary conditions of his bake shop. Prayers for an injunction restraining the respondents from doing the acts alleged in the bill. The respondents answered.

June 13, 1911. *Final decree* entered by consent dismissing the bill without costs.

WOLF BAKER *v.* BERNARD RISEMAN *et als.* 8286 EQ.

May 26, 1911. *Bill* filed. The bill, answer, and final decree in this case are substantially like those in the preceding case of *Silver et al.* v. *Riseman et als.*, 8285 Eq.

GEORGE A. FULLER CO. *v.* DOMINICO D'ALLESANDRO *et als.* 8340 EQ.

July 9, 1911. *Bill* filed alleging a strike in progress, called by the respondents, as officials of a local hod carriers' union, for an increase in wages; picketing, etc.; threats and intimidation of employees, and some assaults. Temporary injunction prayed for restraining the continuance by the respondents of the acts alleged in the bill. The respondents answered.

June 23, 1911. *Interlocutory decree* entered denying, without prejudice, the issuance of an injunction, there appearing to be no necessity for it at this date. The right to renew application for an injunction was specifically allowed.

J. L. Walker & Co. *v.* R. M. Osborne *et als.* 8383 Eq.

June 26, 1911. *Bill* filed alleging a conspiracy, on the part of the respondents, to ruin the complainant's business, unless he re-employ three workmen, union men, run a "closed shop," and pay a certain increase in wages. Allegations of picketing and patrolling the company's place of business; threats of assaults and to call a strike of others in sympathy. Prayers for an injunction restraining the respondents from doing the alleged acts. The respondents answered on July 11, 1911.

July 25, 1911. *Master's report* filed finding, among other things, a *bona fide* strike in progress to increase wages; that the strike of the lasters of Locals Nos. 1 and 5 was not "sympathetic;" that the strike did substantially interfere with the company's business; but that there was no illegal picketing or patrolling, no intimidations or assaults of employees.

August 1, 1911. *Final decree* entered dismissing bill with costs of $16.90, and ordering execution therefor.

J. L. Walker & Co. *v.* John Babcock *et als.* 8768 Eq.

December 6, 1911. *Bill* filed alleging a conspiracy on the part of the respondents to compel the complainants to discharge certain employees not members of the Heel Workers' Independent Union No. 1, and to injure the complainant's business; that a strike was instituted. Allegations of threats, intimidations, patrolling in front of the company's place of business, hostile demonstrations, etc. Prayers for a permanent injunction to restrain the respondents from continuing the acts alleged in the bill.

Maurice Greenwood *v.* The Cloak and Skirt Pressers' Union, Local No. 12. 8827 Eq.

January 1, 1912. *Bill* filed alleging a discharge by the complainant's employer of eight other cloakpressers; that the respondents took no action, thereby allowing the complainant to work until he had earned $61.60; and thereafter by vote ordered the complainant to divide this money among the other eight discharged employees. There were also allegations that there was a vote taken that he be suspended. Prayers for an injunction restraining the respondents from endorsing the action taken by the union and that they be restrained from enforcing their action.

January 3, 1912. *Final decree* entered by agreement dismissing the bill without prejudice.

Elijah Diamond *v.* Kalman Disler *et als.* 8852 Eq.

January 8, 1912. *Bill* filed alleging attempts by the respondents, as officials of the Mill Men's Union and various carpenters' unions, to compel the complainant to maintain a "closed shop;" intimidation of employees and customers; calling of strikes of the employees of three of the complainant's customers; and the placing of his name on the "unfair" list. Usual injunction prayer for restraining the respondents

from continuing the alleged acts. The respondents filed demurrer on June 17, 1912, which was overruled.

May 16, 1912. *Final decree* entered by consent dismissing the bill without costs and without prejudice.

CONCRETE ENGINEERING CO. *v.* MICHAEL J. YOUNG *et als.* 8966 EQ.

February 21, 1912. *Bill* filed alleging a conspiracy of the respondents, members of the Bridge and Structural Iron Workers' Union, Local No. 7, in conjunction with the American Federation of Labor, and the Building Trades Department, in Boston, to prevent the complainant carrying out its contracts to construct certain buildings because the complainant refused to discharge certain non-union men; that a strike of the complainant's employees was called under penalty of fines and forfeitures; and that there was interruption in the fulfillment of the complainant's contracts. Prayers for an injunction restraining the continuance of the alleged acts. The respondents answered.

February 23, 1912. *Interlocutory decree* entered restraining the respondents temporarily from inducing workmen in the company's employ to quit work and from interfering with the company's contracts or with its business, etc.

April 9, 1912. *Final decree* entered by consent dissolving the temporary injunction without costs and without prejudice.

GEO. A. FULLER CO. *v.* JOHN A. ALPINE *et als.* 9098 EQ.

April 15, 1912. *Bill* filed alleging a conspiracy on the part of the respondents, who were members of various local unions and officers of the Building Trades Council, in order to bring about an amalgamation of the United Association of Journeymen Plumbers, Gasfitters, Steamfitters, and Steamfitters' Helpers of United States and Canada, associated with the Building Trades Council and the International Association of Steamfitters, but not associated with the Building Trades Council, both of which, however, being affiliated with the American Federation of Labor. There were also allegations of conspiracy to compel the complainant to discharge all his employees, who were members of the International Association of Steamfitters, and allegations that the respondents called a strike when the complainant refused to discharge the said men. Prayers for a temporary injunction restraining the respondents from interfering with the complainant's business; from continuing such unlawful strike by rescinding the vote authorizing the same; and from fining or threatening to fine or to suspend any members of the said unions, who return to work. The respondents filed a general denial April 22, 1912.

April 25, 1912. *Final decree* entered by consent, dismissing the bill without costs.

H. B. ROBBINS IRON CO. *v.* THE BUILDING TRADES COUNCIL *et als.* 9099 EQ.

April 15, 1912. *Bill* filed alleging that the complainants were sub-contractors of The George A. Fuller Co.; that the respondents had conspired to compel and finally succeeded in compelling the complainants' workmen to strike for the reasons substantially set forth in the case of *George A. Fuller Co.* v. *Alpine*, 9098 Eq. Prayers for an injunction precisely like those in the above mentioned case. The respondents answered.

April 26, 1912. *Decree* entered granting a permanent injunction as prayed for.

May 17, 1912. *Final decree* entered by consent dissolving the injunction and dismissing the bill.

LORD ELECTRIC CO. *v.* CHARLES MURRAY *et als.* 9101 EQ.

April 15, 1912. *Bill* filed alleging a conspiracy of the respondents, who were officers of the Building Trades Council of the Building Trades Department of the American Federation of Labor, and of the International Brotherhood of Electrical Workers, Local No. 103, to cause, and actually causing, a strike of the company's employees for the sole purpose of bringing pressure to bear on The George A. Fuller Company, who was at the time a contractor on certain buildings with the complainants; to compel thereby the complainant to discharge certain steamfitters in its employ and thereby to cause a breach by the complainant of his contract relative to the installation of certain electrical apparatus in the said buildings. Prayers for an injunction restraining the respondents from interfering or conspiring to interfere with the complainant's business; from calling strikes of, or intimidating its employees; from circulating articles or notices tending to obstruct the company in obtaining workmen; asking that they be ordered to cancel notices authorizing said strike; and that damages be assessed. The respondents answered.

April 25, 1912. *Interlocutory decree* entered ordering a temporary injunction to issue as prayed for.

May 18, 1912. *Final decree* entered by consent dissolving the injunction with costs of $105.03 and waiving rights of appeal.

L. W. TAYLOR & CO. *v.* CHARLES MURRAY *et als.* 9107 EQ.

April 16, 1912. *Bill* filed against the officers of The Building Trades Council of the Building Trades Department of the American Federation of Labor for Boston, and officers of The Insulators' and Asbestos Workers' Union, Local No. 6, with prayers for an injunction substantially like that in the case of *Fuller Co.* v. *Alpine et als.*, 9098 Eq. See *ante*, page 222.

April 24, 1912. *Motion to dismiss* by the complainant on the ground that the strike had terminated so far as it was concerned, allowed.

April 24, 1912. *Final decree* entered by consent dismissing the bill without costs.

W. G. CORNELL CO. *v.* JOHN A. ALPINE *et als.* 9108 EQ.

April 16, 1912. *Bill* filed against the Building Trades Council of the Building Trades Department, American Federation of Labor and Plumbers' Union, Local No. 12, with prayers for an injunction substantially like that in the case of *Fuller Co.* v. *Alpine et als.*, 9098 Eq. *See* page 222. The bill also alleged a conspiracy to compel the complainant to cease working under his contracts on any buildings concerning which The George A. Fuller Co. or The L. W. Taylor Co. were interested by virtue of existing contracts.

April 26, 1912. *Final decree* entered ordering a permanent injunction to issue as prayed for.

June 21, 1912. *Waiver of rights under the decree* filed.

W. A. MURTFELDT CO. *v.* CHARLES MURRAY *et als.* 9109 EQ.

April 17, 1912. *Bill* filed and injunction prayed for against officers and members of the Building Trades Council of the Building Trades Department, American Federation of Labor, and of the Sheet Metal Workers' Union, Local No. 17, substantially like that in *Lord Electric Co.* v. *Charles Murray et als.*, 9101 Eq. *See* page 223.

April 26, 1912. *Final decree* entered ordering permanent injunction to issue as prayed for in the bill.

May 28, 1912. *Agreement to waive injunction* filed.

MARKS SCHNEIDER *et al. v.* HYMAN CORIN *et als.* 9242 EQ.

June 3, 1912. *Bill* filed setting out written contracts of employment entered into by the complainants and respondents; that the respondents have a concerted plan of sabotage; that they are wilfully improperly performing their contracts with intent to injure the complainant's business; conspiracy to induce others to leave the employment and to call a strike. Injunction prayed for restraining the respondents from continuing the alleged acts. The respondents answered.

June 7, 1912. *Interlocutory decree* entered referring the case to a master.

CHARLES B. MATTHEWS *v.* L. J. CANNON *et als.* 9354 EQ.

July 16, 1912. *Bill* filed by the owner of a building against certain members of the Bricklayers' Union No. 3, of the Stone Masons' Union No. 9, of the Laborers' and Hod Carriers' Union, all of Boston, alleging a conspiracy on the part of the respondents in inducing the employees of the complainant's contractors to quit work; that no controversy existed between the said contractors and their employees, but that the respondents wished to have certain amounts of money due to certain employees paid by the complainant, or so that the complainant might see that the said amounts were paid. There was also an allegation that a strike had been instituted. Prayers for an injunction restraining the respondents from continuing the alleged acts. The respondents answered.

ETTA DANA *v.* DANIEL H. DEEGON *et als.* 9387 EQ.

July 30, 1912. *Bill* filed alleging a conspiracy by the respondents, as officers of local unions affiliated with the United Brotherhood of Carpenters and Joiners of America, to cause, by fines and otherwise, certain of the workmen of the complainant's contractor to quit work, thereby compelling the husband of the complainant to pay an alleged claim of $100. Prayers for an injunction restraining the respondents from interfering with the said workmen, by threats, infliction of union penalties, etc. The respondents answered.

July 31, 1912. *Stipulation* filed by consent in which the respondents agreed not to do any of the alleged acts.

August 1, 1912. *Final decree* entered, by consent, dismissing the bill without costs.

DAVID SCHNEIDER *et al. v.* SAMUEL LEZAR *et als.* 9502 EQ.

September 19, 1912. *Bill* filed alleging a conspiracy of the respondents, after having struck, in inducing persons not to work for the complainant; malicious patrolling and picketing of the complainant's places of business. Injunction prayed for, restraining the respondents from continuing the acts alleged in the bill.

SHAW FURNITURE CO. *v.* GEORGE SHINE *et als.* 9555 EQ.

October 10, 1912. *Bill* filed alleging a strike, in progress, of the complainant's employees, members of the Upholsterers' Union, Local No. 53; a conspiracy to injure the complainant's business, unless the complainant acceded to the demands of the respondents' union; picketing, threats of injury to workmen; unlawful conduct; inducements to employees to break their contracts of employment. Injunction prayed for against continuance by the respondents of the acts alleged in the bill. The respondents answered.

December 11, 1912. *Master's report* filed finding in part the following facts: That the respondents had picketed the complainant's place of business, and had induced workmen to leave the complainant's employ; that there was no violence or threats of violence; that time contracts in writing existed between the complainant and about fourteen men; that there was no evidence that those under obligations of written contracts had been induced to break them; that the advertisements for men in the N. Y. World and Boston Globe were unknown to the complainants, having been done by a third person; and that at the time the State Board of Conciliation and Arbitration had made no finding that the complainant's business was again normal, in accordance with Acts, 1912, c. 545.

January 20, 1913. *Final decree* entered dismissing the bill with costs.

January 21, 1913. Complainant's appeal filed.

HARRIS ULLIAN *et ali. v.* LOUIS ANSELL *et als.* 9672 EQ.

November 14, 1912. *Bill* filed alleging the calling of a strike of the Cloak and Skirt Makers' Union, Local No. 56, members of which, in the employ of the complainant, left their employment; patrolling and picketing; assaults of employees; conspiracy to prevent persons from entering into the employ of the complainant; convictions for assaults; blocking of the entrances to their places of business; threats, intimidations, offensive language, etc. Injunction prayed for restraining the respondents from continuing the alleged acts.

SOLOMON CALISH *v.* BARNETT FINN *et als.* 9673 EQ.

November 14, 1912. *Bill* filed setting out a contract between the complainant and one of the respondents to erect a building, and alleging threats and coercive action by the United Brotherhood of Carpenters and Joiners of America and Local No. 954, thereby causing certain union men to leave the complainant's employ; threats to call a strike of all workmen on the whole building if the complainant continued to work on the said building, with the result that he is unable to fulfill his contract. Injunction prayed for restraining the respondents from continuing any of the acts mentioned in the bill. The respondents answered.

November 9, 1912. *Motion to dismiss* as against the United Brotherhood of Carpenters and Joiners allowed.

November 19, 1912. *Temporary injunction* issued restraining the respondents from interfering in any way with the execution by the complainant of his contract.

April 30, 1913. *Final decree* entered by consent dissolving the temporary injunction and dismissing the bill without costs.

WITHERELL & DOBBINS CO. *v.* HAROLD A. BAXTER *et als.* 9799 EQ.

December 27, 1912. *Bill* filed alleging a strike of the complainant's employees in progress, and a conspiracy on the part of the respondents to compel the complainant to accede to their demands, as officers of the Cutters' Union, Local No. 163 of Haverhill; also allegations of picketing, threats of injury to employees, etc., and interference with the said employees for the purpose of compelling them to leave their employment. Injunction prayed for, restraining the respondents from continuing the alleged acts.

January 20, 1913. *Master's report* filed finding in part the following facts: That the purpose of the strike was for an increase of wages; that all men involved, except one, were piece workers; that that employee, upon telling the strikers that he was under a three months' contract with the complainant, was not further interfered with; that there was no obstruction of exits or entrances of the company's factory; that certain sporadic cases of violence probably took place; parading in large numbers was carried on; and that many of the acts greatly annoyed the company in the conduct of its business. The respondents answered.

January 20, 1913. *Stipulation* filed in which the respondents agreed not to march in the vicinity of the complainant's factory, until further hearing of the court; but retaining the right to picket lawfully and make use of peaceful, lawful persuasion.

March 29, 1913. *Motion to confirm the master's report for an injunction* filed.

GALE SHOE MANUFACTURING CO. *v.* MICHAEL J. TRACEY *et als.* 9815 EQ.

January 1, 1913. *Bill* filed alleging the calling of a strike of the complainant's workmen, who were members of the United Shoe Workers of America, because the complainant would not maintain a "closed shop"; a conspiracy to ruin the complainant's business at Haverhill and Lynn; parading in front of the complainant's place of business; threats, intimidations, and annoyance of the complainant's non-union employees; and breach of contracts by the strikers. Prayers for injunctions, both temporary and permanent, restraining the respondents from continuing the acts alleged in the bill.

HILLIARD AND MERRILL, INC. *v.* CHARLES MURPHY *et als.* 9836 EQ.

January 7, 1913. *Bill* filed substantially like the bill in the case of *Witherell & Dobbins Co.* v. *Baxter et als.*, 9799 Eq. (*See* above.)

February 1, 1913. *Master's report* filed finding in part the following facts: That the strike resulted from the refusal of the complainant to accept a certain schedule of prices to be paid for wages; that no acts of "physical violence" took place during the continuance of the strike; that there was picketing; that large numbers of strikers congregated in and around the complainant's place of business to induce workmen to leave their employment, resulting in considerable annoyance to employees, which might have given rise to reasonable fear of bodily harm; that the complainant waives its right to damages.

February 6, 1913. *Interlocutory decree* entered by consent confirming the master's report.

MACULLAR PARKER CO. *v.* UNITED GARMENT WORKERS OF AMERICA *et als.* 9937 EQ.

February 11, 1913. *Bill* filed alleging a strike, in progress, of the members of the United Garment Workers of America; that the respondents are trying to induce the complainant's employees, not members of the union, to join in the strike, and are threatening them with bodily harm and intimidating them by means of knives, revolvers, etc.; that the complainant is hampered thereby in the conduct of his business. Injunction prayed for to restrain the respondents from continuing the alleged acts. The respondents answered.

February 11, 1913. *Ad interim injunction* issued restraining the respondents from continuing the acts alleged in the bill.

February 12, 1913. *Temporary injunction* denied.

FRANK I. HILLIARD *et al. v.* JOHN A. OLDHAM *et als.* 9959 EQ.

February 17, 1913. *Bill* filed alleging the calling of a strike by the respondents, as officers of the United Shoe Workers of America and Cutters' Union, Local No. 63, in order to force the complainants against their will to maintain a "closed shop" and also to bring pressure to bear, through the complainants, to force another concern to do likewise. There were also allegations of a "sympathetic strike", conspiracy to ruin the complainants' business, picketing, intimidations, and inducements to employees to break their contracts. Prayers for an injunction restraining the respondents from continuing the acts alleged in the bill.

March 29, 1913. *Motion* filed referring the case to a master with the cases of *Perry Co. et al.* v. *Oldham et als.*, 9960 Eq.; *Witherell & Dobbins Co. et al.* v. *Oldham et als.*, 9961 Eq.; *Leavitt et al.* v. *Oldham et als.*, 9962 Eq.

AUSTIN H. PERRY CO. *v.* JOHN A. OLDHAM *et als.* 9960 EQ.

February 17, 1913. *Bill* filed substantially the same as that in *Hilliard et al.* v. *Oldham et als.*, 9959 Eq., (*see* above), except as to the allegations relative to a "sympathetic strike" which were omitted in this bill.

March 29, 1913. *Motion to refer the case to a master* filed.

WITHERELL & DOBBINS CO. *v.* JOHN A. OLDHAM *et als.* 9961 EQ.

February 17, 1913. *Bill* filed substantially the same as that in *Hilliard et al.* v. *Oldham et als.*, 9959 Eq., (*see* above), except as to allegations relative to a "sympathetic strike" here omitted.

GEORGE B. LEAVITT *et al. v.* JOHN A. OLDHAM *et als.* 9962 EQ.

February 17, 1913. *Bill* filed substantially the same as that in *Hilliard et al.* v. *Oldham et als.*, 9959 Eq. (*See* above.)

SIGNOR HEINTZELMAN *v.* DANIEL J. SULLIVAN *et als.* 10013 EQ.

March 11, 1913. *Bill* filed alleging misrepresentations by one of the respondents, members and officers of the Allied Printing Trades Council, to the said Council that the complainant was employing a non-union employee in his printing business; that

on account of this, there was great danger of the complainant losing his rights to use the union label. Prayers that respondents show why said employee is not a member in good standing; that such complaints by the Boston Printing Pressmen's Union be withdrawn and that other necessary relief be granted.

April 24, 1913. *Final decree* entered dismissing bill.

JOS. J. DALLAS *et al. v.* SIGNOR HEINTZELMAN. 10048 EQ.

March 21, 1913. *Bill* filed alleging the adoption by the Allied Printing Trades Council of Boston of a certain label and the granting of permission to the respondent to use the said label as long as he should employ only union men; that the respondent had discontinued employing only union labor but refused to return to the council the union label. Prayers for an injunction restraining the respondents from continuing to use the said label and ordering him to deliver up the same to the complainants. The respondents answered on April 2, 1913.

April 24, 1913. *Final decree* entered restraining the respondent from using the said label and from retaining it in his possession. (*See also* page 234.)

JAMES B. RENDLE *et al. v.* WILLIAM B. WALSH *et als.* 10140 EQ.

April 17, 1913. *Bill* filed alleging that the complainants had signed a contract with the Aberthaw Construction Co., whereby the complainants agreed to deliver and drive a certain number of piles per day in the construction of a certain building; that the respondents were conspiring to compel the complainants to bring pressure to bear on the said company to discharge its non-union men and employ thereafter only union men under threats of calling a general strike of all union employees at that time employed by various contractors in the construction of the building; that the employees of the said company, members of the Wharf and Bridge Carpenters' Union, Local No. 1393, were willing to work and would remain at work, unless called upon to strike by the respondents under penalty of fines and forfeitures. Prayers for an injunction restraining the respondents from continuing any of the acts, or threats, alleged in the bill. The respondents answered.

May 9, 1913. *Final decree* entered by consent dismissing the bill without costs and without prejudice.

PAUL W. WATSON *et al. v.* MORRIS SHEINBERG *et al.* 10156 EQ.

April 24, 1913. *Bill* filed alleging that the respondents induced employees of the complainant skilled in secret processes to leave his employment and enter into the employment of the respondents to the great damage of the complainant, etc. Prayers that respondents be enjoined from inducing away the said servants and that damages be awarded. The respondents answered on May 20, 1913.

LOUIS WALDMAN *v.* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL NO. 954 *et als.* 10296 EQ.

June 9, 1913. *Bill* filed alleging threats and intimidations of the complainant's union employees by the respondents, resulting in the said employees' leaving their employment against their will; threats to call a general strike of the workmen on the

whole building in the construction of which the complainant was only one of several contractors. Prayers for an injunction restraining the respondents from continuing the alleged acts.

June 11, 1913. *Temporary injunction* issued restraining the respondents from further threatening, etc., the employees of the complainant or hindering the complainant in carrying on his business or in fulfilling his contract.

MAURICE E. FINN *v.* SIGMOND WARF. 10300 EQ.

June 10, 1913. *Bill* filed alleging the patrolling of the complainant's place of business and the inducing of persons about to enter his employment office to go to his, the respondent's, employment office, to the great damage to the complainant. Injunction prayed for.

July 30, 1913. *Master's report* filed setting out the fact that the parties had reached a settlement in the case.

MARK LEWIS *v.* WILLIAM CUMMINGS *et als.* 10406 EQ.

July 23, 1913. *Bill* filed alleging the calling of a strike of the employees of the complainant's contractor, because the complainant refused to pay a certain amount of money claimed by one of the respondents, and officer of the Plasterers' Union, Local No. 10, to be due to him. The contractor had been employing only union men and had been observing all rates of wages and hours demanded by the said union. Prayers for an injunction from continuing the order for the said strike; from interfering in any way with the employment by the complainant or his contractor of members of the said union; and that the respondents direct the men out on the strike to return to work. The respondents answered on July 30, 1913.

August 5, 1913. *Permanent injunction* issued restraining the respondents from interfering in any way with any contractor or laborer employed in the construction of the complainant's buildings as alleged in the bill; and from intimidating or influencing any person in, or about to enter, the employ of the complainant or of those contracting with him.

HENRY WEBBER *v.* SAMUEL FINKELSTEIN *et als.* 10558 EQ.

September 5, 1913. *Bill* filed alleging the expulsion of the complainant by the respondents, as officers of the Cloak and Skirt Makers' Union, Local No. 56, from the said union, without cause, on false charges, and without a hearing. Prayers for an injunction restraining the respondents from interfering with his right to work at his calling, or declaring union shops in violation of union rules by employing him; and that damages be assessed for the loss sustained by him in being discharged.

September 9, 1913. *Final decree* entered by consent dismissing the bill.

THE TISHLER-LEVENSON CO. *v.* JACOB KOPELMAN *et al.* (CAP MAKERS' UNION LOCAL NO. 7, AND CUTTERS' AND BLOCKERS' UNION LOCAL NO. 38.) 10842 EQ.

December 24, 1913. *Bill* filed alleging a conspiracy by the respondents to boycott the complainant for employing non-union men, when the complainant had never been requested or allowed, or his employees allowed, to join the respondents' unions. Threats to put the complainant out of business, picketing, and inducing employees

to break their contracts of employment were also alleged. Injunction prayed for, restraining the respondents from continuing the acts alleged.

February 9, 1914. *Demurrer* filed and overruled.

February 14, 1914. *Reference* to a master.

EMPIRE GROCERY CO. *v.* THOMAS NANES *et al.* 11146 EQ.

April 4, 1914. *Bill* filed alleging a conspiracy by the respondents in calling a strike of the complainant's employees; threats and unlawful persuasion of the complainant's other employees to leave their employment; intimidations, picketing, etc.; the placing of the complainant's name on the "unfair list," etc. Prayers that an injunction issue restraining the respondents from doing the acts alleged in the bill.

JOSEPH NEWMAN *et al. v.* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL NO. 954 *et als.* 11270 EQ.

April 30, 1914. *Bill* filed alleging that the respondents called a strike of the carpenters in the employ of the complainants under penalty of heavy fines; that the respondents were conspiring to prevent the complainants from keeping in their employ other carpenters. There were also allegations of threats and intimidation of workmen. Prayers for an injunction restraining the respondents from continuing the acts alleged.

May 5, 1914. *Temporary injunction* issued as prayed for in the bill.

JOSEPH VINER *v.* LOUIS HAMSHELL *et als.* 11445 EQ.

June 26, 1914. *Bill* filed alleging that the complainant was a member in good standing in the International Ladies' Garment Workers' Union and the Skirt and Cloak Makers' Union; that he was unlawfully prevented from working for one Freedman; was unlawfully compelled to pay a fine of $25 to be allowed to return to work; was unlawfully excluded from the meetings of the said union; and that the respondents were continuing to harass and prevent the complainant from getting or keeping employment. Prayers that the respondents be restrained from doing or continuing any of the alleged acts. The respondents answered on July 8, 1914.

July 8, 1914. *Reference* to a master.

LEON COPPENS *et ali. v.* EDWARD BRODERS *et als.* 11583 EQ.

August 12, 1914. *Bill* filed alleging a conspiracy by the respondents, members of the Cigar Makers' Union, Local No. 97, to compel all employers of cigar makers, by threats, strikes, etc., not to employ any non-union workmen and to use a union label, known as the "Blue Label"; that by threats, strikes, etc., they have unlawfully induced the complainants' employers to discharge the complainants. Injunction prayed for restraining the respondents from continuing the acts alleged. A *demurrer* and an *answer* were filed on August 31, 1914.

September 16, 1914. *Final decree* entered by consent dismissing the bill without costs.

GIOVANNI SCARINCI *v.* SAMUEL ZORN *et als.* 11601 EQ.

August 20, 1914. *Bill* filed alleging that the respondents, as officers of the Boston Branch of the United Garment Workers' Union of America, had, by threats, and without authority, compelled great numbers of the employers of Boston journeyman

tailors to refuse work to any union man, unless he produced a written permission card from the said respondents; that the complainant had been refused work several times on that account. Injunction prayed for restraining the said respondents from issuing such cards, and from interfering with the complainant in obtaining employment, and that damages be assessed.

October 21, 1914. *Final decree* entered dismissing the bill without costs.

Cornelius Keefe *v.* James Mantel *et als.* 11857 Eq.

November 20, 1914. *Bill* filed alleging, among other things, that there had been a strike of the members of the Bartenders' Union, Local No. 77; that the complainant had filled the positions of the strikers with non-union men; that the respondents were conspiring, after the strike was over, to prevent persons entering into, or remaining in, the employ of the complainant, unless such persons joined the said union. There were also allegations of picketing, threats and intimidation of workmen, and that the respondents were advertising by the use of placards that the complainant was on the "unfair list." Prayers for an injunction restraining the respondents from continuing the alleged acts and that they be ordered to pay damages. The respondents answered.

November 23, 1914. *Stipulation* filed whereby the respondents agreed, pending the adjudication of this case and No. 11858 Eq. of the same name, not to display the said placards, nor to picket around or about the complainant's place of business.

November 2, 1915. *Master's report* filed finding, among other things, the following facts: That the strike of 1910 was over at the time of filing the bill; that the placards mentioned in the bill had been and were being displayed as alleged, and that there had been some picketing, threats and interference with the complainant's business.

Cornelius Keefe *et al. v.* James Mantel *et als.* 11858 Eq.

November 20, 1914. *Bill and other papers* filed and action taken by the court thereon are substantially the same as those in the case of *Keefe et al.* v. *Mantel et als.*, 11857 Eq., the preceding case. Both were referred to a master, one report having been filed in both cases. The stipulation filed pending settlement or adjudication applied also to both cases.

Ira J. Hunt *et als. v.* William M. Beck. 12566 Eq.

July 31, 1915. *Bill* filed alleging the maintenance by the complainants of a "closed shop"; and that the respondent was about to urge their employees to strike, unless the complainants discharged an engineer, who, it was alleged, was of good standing in his union. There were also allegations of threats to place the complainants' names on the "unfair" list, so-called. Prayers for an injunction restraining the respondent from doing or continuing the acts set out in the bill.

August 10, 1915. *Temporary injunction* issued as prayed for.

Julius Hurwitz *v.* Sam. Fried *et als.* 12567 Eq.

July 31, 1915. *Bill* filed alleging the discharge by the complainant of all his employees who were members of the Bakers' and Confectionery Workers' Union, Local No. 45; that since that time the respondents have been picketing and patrolling in

front of his place of business; and that they have threatened with bodily harm his employees and customers, and blocked the entrances to his place of business. Prayers asking that the respondents be restrained from the continuance of the alleged acts.

August 9, 1915. *Temporary injunction* issued as prayed for.

FRANK ANASTASI *v.* THE BARBERS' UNION, LOCAL NO. 182 *et als.* 12578 EQ.

August 5, 1915. *Bill* filed alleging a conspiracy on the part of the respondents in injustifiably calling a strike of the complainant's employees, members of the respondent union, and preventing customers from entering the complainant's shop. There were also allegations that the respondents were distributing cards having printed on them the words: "Do not patronize Frank Anastasi's Barber Shop; Unfair to organized Labor." Prayers for an injunction restraining the respondents from continuing the alleged acts.

August 9, 1915. *Respondents' demurrer and answer* filed.

September 17, 1915. *Substitute bill* filed naming as respondents certain individuals in place of the barbers' union.

September 27, 1915. *Respondents' demurrer to the substituted bill* filed.

JOHN BOGNI *et ali. v.* GIOVANNI PEROTTI *et als.* 12596 EQ.

August 11, 1915. *Bill* filed. (See the decision of the Supreme Judicial Court for the Commonwealth in this case, 224 Mass. 152, *ante*, page 185.)

The following cases have reference to the use of union labels, trade marks on union goods, trade union names, and difficulties relating to the internal affairs of various unions: *Harry Cotton et ali.* v. *Jonas Thorne et als.*, 8888 Eq., a trade mark case; *Jos. P. Sullivan* v. *Louis P. Pieper et als.*, 9417 Eq., a case involving the release of a baseball player; *Ralph L. Wyman* v. *Joseph Murphy et als.*, 9775 Eq., involving the custody and transfer of private property of a union; *Geo. C. Bodine* v. *Atlantic Coast Seamen's Union*, involving the alleged misuse of a union name; *Thomas Hawkins et als.* v. *Frank W. Frisbee et als.*, 11530 Eq., similar to the preceding case; *Louis Papp et als.* v. *Peter A. Halligan et al.*, 11695 Eq.; *Meyer Papp et als.* v. *James H. Connors et al.*, 11793 Eq., and *Jacob Thurman et ali.* v. *Emmanuel M. Michael et als.*, 11872 Eq., involving the alleged violation of agreements not to work for another employer in same kind of business in the same district within a certain time or to divert the complainant's trade; *Samuel Zorn et al.* v. *Thomas A. Richert et al.*, 11960 Eq., relative to alleged refusal of past officers to deliver up certain funds and documents to newly elected officers of a union; *William Corbett et al.* v. *John Hamilton et al.*, 12166 Eq., involving an alleged fraudulent use of trade insignia; *U. S. Grand Lodge, Order Brith Abraham* v. *Silverman et al.*, 12416 Eq., involving an alleged attempt to compel a subordinate branch to secede from the main lodge; *Daniel J. McDonald et al.* v. *Louis Rubin et al.*, 12940 Eq., involving an alleged misuse of a union label; and *Patrick J. Gorman et als.* v. *Wm. DuWors et als.*, 13016 Eq., a case involving the use of a mandatory injunction for the purpose of compelling certain persons to conform to the by-laws and constitution of an international union, to pay certain dues, and to deliver up certain records and the charter of one of its local branches.

For three other cases involving the alleged misuse of the union label, "3-20-8," see *Ed. Broders* v. *Ed. P. Manning*, 11241 Eq., *Ed. Broders* v. *Klein's Pharmacy*, 11284 Eq., *Ed. Broders* v. *Huddell and McGovern Co.*, 11297 Eq.

Worcester County.

SUPERIOR COURT.

MARIANO DEMINICO *v.* DAVID CRAIG *et als.* 1234 LAW.

July 15, 1909. Bill filed. (See the decision of the Supreme Judicial Court for the Commonwealth in this case, 207 Mass. 593, *ante*, page 136.)

The following cases, treated fully in an earlier bulletin issued by this Bureau, Labor Bulletin No. 70, were dismissed by order of court at the call of the docket on June 20, 1911: *Prentice Bros. Co.* v. *Worcester Lodge* (*Machinists*), 543 Eq.; *Francis A. McCauliff* v. *Fitchburg Branch Granite Cutters' Union*, 928 Eq.; *American Official Co.* v. *The Metal Polishers', etc., Union et als.*, 1527 Eq.

The following cases are of interest as showing action of the court in reinstating certain employees who had been dropped as members of fraternal societies: *Gustaf F. Hedbolm* v. *John A. Anderson et als.*, 9665 Eq.; *Vincent Takubauskas* v. *The Society of Brotherly Aid in the Name of St. George, The Warrior*, 14964 Eq.

V.

CASES OF CONTEMPT OF COURT.

The filing of petitions for contempt of court has been noted under the cases in which they arose. There follows the complete record of proceedings upon petitions for attachments for contempt of court for violation of injunctions in labor disputes.

Suffolk County.

SUPREME JUDICIAL COURT.

EDWIN W. COX *v.* ELIZABETH PEABODY HOUSE ASSOCIATION *et als.* 18052 Eq.

April 22, 1913. *Petition for attachment for contempt* filed against certain of the respondents for violation of the terms of the injunction.

April 25, 1913. *Order by the court* that the complainant recover costs in the sum of $21.84.

April 28, 1913. *Acknowledgment of satisfaction of costs* filed. (*See also* page 202.)

SUPERIOR COURT.

F. BRIGHAM & GREGORY CO. *v.* J. R. OLDHAM *et als.* 8054 Eq.

April 20, 1911. *Petition for attachment for contempt* filed against one of the Respondents for continuing, after issuance of a temporary injunction, to intimidate workmen.

April 20, 1911. *Further interlocutory decree* issued restraining the continuance of the acts specified in the temporary injunction.

May 2, 1911. *Memorandum of finding by the court* filed. (*See* page 217.)

May 2, 1911. *Order on petition for contempt* issued, imposing a fine of $200 on one of the respondents and stating that he stand committed to jail until the fine be paid. The fine was paid forthwith.

JOS. J. DALLAS *et al. v.* SIGNOR HEINTZELMAN. 10048 Eq.

June 24, 1913. *Petition for attachment for contempt* filed. For facts in the bill and final decree, *see* page 228.

June 24, 1913. *Respondent's answer, a general denial, and demurrer* filed.

APPENDIX A.

SUBJECT INDEX.

ADVERTISING DURING STRIKE.

An act compelling employers to mention explicitly the existence of a strike in advertising for strikebreakers is constitutional.

Commonwealth v. *Libbey*, 216 Mass. 356, *ante*, page 151.

BANNERS.

Display of banners with inscriptions referring to a pending strike may be unlawful intimidation.

Sherry v. *Perkins*, 147 Mass. 212, *ante*, page 42.

BLACKLIST.

By employers of striking employees not enjoined; but overruled by Cornellier *v.* Haverhill Shoe Manufacturers Association, 221 Mass. 554, below.

Worthington v. *Waring*, 157 Mass. 421, *ante*, page 44.

Under certain circumstances damages resulting to a person by reason of being "blacklisted" may be obtained by an action at law or by a bill in equity.

Cornellier v. *Haverhill Shoe Manufacturers Association*, 221 Mass. 554, *ante*, page 179.

BOYCOTT.

Threat of boycott or boycott of employer to compel discharge of non-union men is unlawful.

Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.

Agreement by members of manufacturers' association not to have business dealings with any person not a member under penalty of a heavy fine is unlawful.

Martell v. *White*, 185 Mass. 255, *ante*, page 71.

"An essential element of a boycott is intentional injury to somebody."

Hoban v. *Dempsey*, 217 Mass. 166, *ante*, page 155.

A boycott declared by the members of a labor union against a dealer in masons' supplies, who also maintains other branches of his service, is none the less an unjustifiable interference with his business because it is aimed at only one branch of it.

Burnham v. *Dowd*, 217 Mass. 351, *ante*, page 159.

As to what is necessary to constitute a boycott arising out of unlawful interference with one's business, see

New England Cement Gun Co. v. *McGivern*, 218 Mass. 198, *ante*, page 165.

CLOSED SHOP.

Strike to compel employer to carry on his business as a "closed shop" is illegal.

Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

See also DISCHARGE OF EMPLOYEE.

COERCION.

See INTIMIDATION.

COMPETITION.

Combination of workmen to compel employer to pay a "fine" which he is not under legal liability to pay, by making or carrying out threat of strike is not justifiable as lawful competition.

Carew v. *Rutherford*, 106 Mass. 1, *ante*, page 30.

May justify interference with right to be undisturbed in the conduct of one's business or the pursuit of one's means of livelihood.

Walker v. *Cronin*, 107 Mass. 555, *ante*, page 36.

Does not justify an attempt to compel non-union workmen to join union by interfering with their employment.

Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.

COMPETITION — *Con.*

An agreement of the members of manufacturers' association not to transact any business with non-members under penalty of heavy fines *held* not justifiable as lawful competition.

Martell v. *White*, 185 Mass. 255, *ante*, page 71.

Procuring discharge of non-union man by employer who has agreed not to employ men objectionable to union for no reason other than that he will not join union is not justifiable on ground of competition.

Berry v. *Donovan*, 188 Mass. 353, *ante*, page 76.

A strike by a combination of bricklayers and masons to refuse to lay bricks or stone if the pointing is given to others is justifiable because the principle of competition justifies the refusal to do any of the work unless all of it is given.

Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.

Does not justify an attempt to induce breach of a formal contract.

Beekman v. *Marsters*, 195 Mass. 205, *ante*, page 98.

Does not justify a strike to compel the maintenance of a "closed shop."

Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

CONSPIRACY.

A criminal conspiracy is a combination to bring about an unlawful result or to bring about a lawful result by unlawful means.

Commonwealth v. *Hunt*, 4 Met. 111, *ante*, page 18.

A combination of workmen with the design of acting together for the purpose of improving the conditions under which they work, where it does not appear that the use of unlawful means is a part of the purpose of the combination is not an unlawful conspiracy.

Snow v. *Wheeler*, 133 Mass. 179, *ante*, page 40.

It is not universally true that what any one man alone may do, any number of men, by concerted action, may do.

L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.

For an example of what is said to be an unlawful conspiracy because it was a combination to bring about a lawful result by the use of unlawful means, see

L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.

For other examples of unlawful combinations, see under UNLAWFUL INTERFERENCE.

CONTEMPT OF COURT.

Evidence examined and held not to support finding adjudging respondents to be in contempt of court in violating a temporary injunction.

Casson v. *McIntosh*, 199 Mass. 443, *ante*, page 111.

CONTRACT OF EMPLOYMENT.

Where there is a formal contract to work or to employ for a fixed time, it is unlawful in any way to persuade or attempt to persuade either party to break such contract.

Walker v. *Cronin*, 107 Mass. 555, *ante*, page 36.

Beekman v. *Marsters*, 195 Mass. 205, *ante*, page 98.

Where either party has a right to terminate the relation of employer and employed at will, persuasion so to do is unlawful unless in the exercise of the right of competition and by means which are lawful in themselves.

Walker v. *Cronin*, 107 Mass. 555, *ante*, page 36.

Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.

Moran v. *Dunphy*, 177 Mass. 485, *ante*, page 69.

Berry v. *Donovan*, 188 Mass. 353, *ante*, page 76.

Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.

Persons inducing employees to break their contracts for future service may be restrained from so doing.

Folsom v. *Lewis*, 208 Mass. 336, *ante*, page 141.

DAMAGES.

As to damages for illegally displaying placards affecting one's business after the termination of a strike, see

Steinert & Sons Co. v. *Tagen*, 207 Mass. 394, *ante*, page 133.

DAMAGES — *Con.*

As to damages recoverable for injury to the plaintiff's reputation by illegal action of strikers, see

DeMinico v. *Craig*, 207 Mass. 593, *ante*, page 136.

As to the recovery of damages from officers and members of an unincorporated labor union for the loss of wages for one's present or prospective inability to procure employment, see

Hanson v. *Innis*, 211 Mass. 301, *ante*, page 147.

As to damages recoverable by one in business for having been injured in his business because he had been declared "unfair" by a union, see

Burnham v. *Dowd*, 217 Mass. 351, *ante*, page 159.

As to the amount of recovery in damages when the boycotting of the plaintiff's business through threats or otherwise has resulted in damage, see

New England Cement Gun Co. v. *McGivern*, 218 Mass. 198, *ante*, page 165.

As to the procedure of the court where nominal damages are to be given to one person and substantial damages to another, see

Fairbanks v. *McDonald*, 219 Mass. 291, *ante*, page 174.

If a boycott results in damage to the person boycotted, recovery in damages may be had to the extent of the injury in equity as well as at law.

Cornellier v. *Haverhill Shoe Manufacturers Association*, 221 Mass. 554, *ante*, page 179.

DISCHARGE OF EMPLOYEE.

To induce employer to discharge employee without justifiable cause may be actionable tort although there is no formal contract of employment.

Moran v. *Dunphy*, 177 Mass. 485, *ante*, page 69.

Procuring discharge of non-union workmen by employer who has agreed not to retain in his employ men objectionable to the union for no other reason than that he is not a member of the union is not justifiable as lawful competition.

Berry v. *Donovan*, 188 Mass. 353, *ante*, page 76.

Strike to compel discharge of non-union employee is unlawful.

Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

Where the purpose of a strike was not to secure for the members of a union all the work that was to be had from their employers, but to deprive the plaintiffs of employment and thereby make it impossible for them to obtain a livelihood unless they should join the union upon the union's own terms, such strike may be enjoined.

Fairbanks v. *McDonald*, 219 Mass. 291, *ante*, page 174.

FINES.

Where employer has been forced by threat of strike to pay a sum of money called a "fine" to an association of his employees, the money so paid under no legal liability may be recovered back.

Carew v. *Rutherford*, 106 Mass. 1, *ante*, page 30.

Where agreement of manufacturers' association not to have business dealings with persons not members was enforced by imposition of heavy fines it was declared unlawful.

Martell v. *White*, 185 Mass. 255, *ante*, page 71.

The imposition by a labor union of fines upon its members to induce them to leave the employ of one against whom the union is carrying on a strike *was held* to be unlawful intimidation.

L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.

GOOD FAITH.

Good faith upon the part of the strikers is not, as such, a legal justification for striking. It only becomes so after a determination by the court whether the purpose of striking is legal or illegal.

DeMinico v. *Craig*, 207 Mass. 593, *ante*, page 136.

INJUNCTION.

Against display of banners for purpose of intimidation of persons seeking or accepting employment from employer against whom strike is pending, enjoined.

Sherry v. *Perkins*, 147 Mass. 212, *ante*, page 42.

INJUNCTION — *Con.*

Against blacklist of striking employees denied.
Worthington v. *Waring*, 157 Mass. 421, *ante*, page 44.

Against maintaining patrol in front of premises of employer for purpose of giving notice of pendency of strike to those seeking to do business with him, enjoined.
Vegelahn v. *Guntner*, 167 Mass. 92, *ante*, page 49.

Against intimidation of persons employed or seeking employment, by physical force or by threats of violence or harm, allowed.
Vegelahn v. *Guntner*, 167 Mass. 92, *ante*, page 49.

Against attempting by threat of strike or boycott to induce employer to discharge non-union men, allowed.
Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.

Against a strike to obtain all of an employer's work, refused.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.

Against a strike held to be in the nature of a sympathetic strike, allowed.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.

Against a strike to compel employment of union men only, allowed.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

Against breaking contract induced by threat of general strike, allowed.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

Against interference in the future with contracts not described in the bill, refused.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

Against attempting to induce breach of existing formal contract, allowed.
Beekman v. *Marsters*, 195 Mass. 205, *ante*, page 98.

Against doing any acts whatever in furtherance of unlawful strike, allowed.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

Against paying strike benefits, when strike is unlawful, allowed.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

Against placing name of employer on "unfair list," allowed.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

Restraining the imposition of fines and threats of such imposition in order to prevent persons from entering the employment of one against whom a strike was in progress, allowed.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.

An employer may enjoin the driving through the streets of wagons displaying placards relative to a strike at his place of business, which strike, at the time of such display, is over.
Steinert & Sons Co. v. *Tagen*, 207 Mass. 394, *ante*, page 133.

A suit in equity may be maintained to enjoin such persons as are unlawfully interfering with another's business by inducing employees under contract for future service to break such contracts.
Folsom v. *Lewis*, 208 Mass. 336, *ante*, page 141.

Officers and members of a labor union may be enjoined for unlawfully causing the discharge of the employer's foreman, if it appears that the unlawful acts were the actual cause of the discharge of the plaintiff and made it impossible for him to secure other employment.
Hanson v. *Innis*, 211 Mass. 301, *ante*, page 147.

Declaring an employer, whose employees are on a strike, to be "unfair" may be enjoined.
Burnham v. *Dowd*, 217 Mass. 351, *ante*, page 159.

INTERFERENCE.

With rights under formal contract.

With right to employ or be employed.

With right to be free in carrying on one's business.

See under UNLAWFUL INTERFERENCE.

INTIMIDATION.

Of present or prospective employees.

Display of banners bearing inscriptions referring to an existing strike near premises of employer may be unlawful intimidation.
Sherry v. *Perkins*, 147 Mass. 212, *ante*, page 42.

Intimidation — *Con.*

The flow of labor to an employer cannot be obstructed by intimidation produced by means of injury to person or property or by threats of such injury.
Vegelahn v. *Guntner*, 167 Mass. 92, *ante*, page 49.

Crowding about employer's doorway, blocking same and jostling employees, enjoined as unlawful intimidation.
Vegelahn v. *Guntner*, 167 Mass. 92, *ante*, page 49.

Maintaining patrol in front of premises of employer against whom strike is in progress *held* to be unlawful intimidation.
Vegelahn v. *Guntner*, 167 Mass. 92, *ante*, page 49.

Imposition of fines by labor union upon members who refuse to leave the employ of a contractor against whom the union is conducting a strike *held* to be unlawful intimidation.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.

Of employer to compel discharge of employee.

Inducing employer to discharge non-union workman by threat of strike or boycott is unlawful intimidation.
Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.

Of third persons.

Enforcing agreement of members of manufacturers' association not to do business with non-members by imposition of fines is unlawful.
Martell v. *White*, 185 Mass. 255, *ante*, page 71.

Threatening owner of building under construction that all workmen engaged upon it will strike unless owner coerces one of the contractors to yield in dispute with employee by threatening to break contract is unlawful intimidation.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

Malice.

Malicious interference with another's right to be undisturbed in conduct of business or pursuit of means of livelihood.
Walker v. *Cronin*, 107 Mass. 555, *ante*, page 36.
Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.

As used in these opinions, malice means an act which injures another in his legal rights done intentionally and without justification. It is not necessary to prove any spite or ill will.
Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.
Beekman v. *Marsters*, 195 Mass. 205, *ante*, page 98.

Monopoly of the Labor Market.

A strike for the purpose of compelling employers to submit to an attempt to obtain for the strikers or their union a complete monopoly of the labor market in any one kind of business, may be enjoined.
Folsom v. *Lewis*, 208 Mass. 336, *ante*, page 141.

Parties.

An unincorporated labor union cannot be made a party defendant.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.
See also *Reynolds* v. *Davis*, 198 Mass. 294, *ante*, page 103.

Patrolling.

See Intimidation.

Peaceable Persuasion.

Where a formal contract to work for a fixed time exists, any attempt to procure its breach by peaceable persuasion or otherwise is unlawful.
Walker v. *Cronin*, 107 Mass. 555, *ante*, page 36.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.
Beekman v. *Marsters*, 195 Mass. 205, *ante*, page 98.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

It is not unlawful to attempt to persuade persons not to enter or remain in the employment of one against whom a strike is being carried on if the persuasion does not amount to intimidation.
Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.

PICKETING.
See INTIMIDATION.

PLACARDS.
Placards stating that "the union teamsters are on a strike for hours and wages" at an employer's place of business more than four months after a justifiable strike is ended cannot be lawfully displayed.
Steinert & Sons Co. v. *Tagen*, 207 Mass. 394, *ante*, page 133.

STATUTE.
Constitutionality.
"A statute undertaking to exempt trade unions and associations of employers and their members and officials from liability for tortious acts committed by or on behalf of such a union or association would be unconstitutional."
Opinion of Justices, 211 Mass. 618, *ante*, page 150.
An act compelling employers to mention explicitly the existence of a strike in advertising for strikebreakers is constitutional. (*See* Acts, 1910, c. 445, as last am. by Acts, 1914, c. 347.)
Commonwealth v. *Libbey*, 216 Mass. 356, *ante*, page 151.
Holding unconstitutional a statute prohibiting the courts of equity from granting injunctions where no danger to damage of property or property right is imminent and declaring the relation of employer and employee to be a personal and not a property right. (*See* Acts, 1914, c. 778.)
Bogni v. *Perotti*, 224 Mass. 152, *ante*, page 185.

STRIKE.
Lawful.
A strike is lawful when it is against an employer with whom the striking workmen have a direct dispute with regard to wages or conditions of labor for the purpose of obtaining a betterment of these conditions.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.
A strike by a combination of bricklayers who refused to lay bricks, if the pointing of them is given to others is a lawful strike because the principle of competition justifies a refusal to do any work unless all of it is given.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.
Lawfulness of a strike depends on purpose for which it is carried on.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.
Where employees made four demands of which two related to wages and hours of labor and the others were that all foremen should be members of a union and that the business agents of the union should be allowed to visit any building under construction, a strike following the bare refusal of all the demands was treated as a justifiable strike so far as represents its ultimate object.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.
A lawful strike may not be carried on by intimidation or other unlawful means.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.
As to the legality of striking for the purpose of obtaining the discharge of certain persons who interfere with the equitable working out of the piece-work system of wages, see
Minasian v. *Osborne*, 210 Mass. 250, *ante*, page 143.
Unlawful.
A strike to compel employer to pay to association of employees a "fine" which he is under no legal liability to pay *held* unlawful.
Carew v. *Rutherford*, 106 Mass. 1, *ante*, page 30.
Strike to compel discharge of non-union men is unlawful.
Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.
A sympathetic strike is unlawful.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.
Union rules and by-laws considered as an element in determining lawfulness of strike.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.
A strike to compel the establishment of a "closed shop" is illegal.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

STRIKE — *Con.*
Unlawful — Con.
The imposition by a labor union of fines upon its members to induce them to leave the employ of one against whom the union is conducting a strike *held* to be unlawful intimidation.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.
Where a strike is illegal doing any acts whatever, in furtherance thereof, may be enjoined.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.
A labor strike which has for its justification only the good faith of the strikebreakers is not a sufficient one to deter the court from granting an injunction.
DeMinico v. *Craig*, 207 Mass. 593, *ante*, page 136.
A strike which results in the unlawful interference with contracts for future service between the employee and his employer is unlawful.
Folsom v. *Lewis*, 208 Mass. 336, *ante*, page 141.
As to the illegality of striking for the purpose of causing the discharge of a foreman of the employer, see
Hanson v. *Innis*, 211 Mass. 301, *ante*, page 147.

STRIKE BENEFITS.
Paying strike benefits enjoined where strike was unlawful.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

SYMPATHETIC STRIKE.
Strike to force a contractor to force one with whom he had contract to yield in a dispute which a third person has with the striking employees is unlawful and will be enjoined.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.
It is unlawful to threaten a general strike of all workmen engaged upon a building under construction in order to compel the owner to force one of the contractors to yield in a dispute with his employees by breaking or threatening to break his contract with him.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.
And if the owner in consequence of such action threatens to break such a contract he also may be enjoined from so doing.
Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.
Strike to compel employer to accept decision of grievance committee of union in dispute between individual workmen and employer may be illegal as in the nature of a sympathetic strike.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.
See also STRIKE.

THREATS.
See INTIMIDATION.

TRADE UNION.
Legality of, declared.
Carew v. *Rutherford*, 106 Mass. 1, *ante*, page 30.
Snow v. *Wheeler*, 113 Mass. 179, *ante*, page 40.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.
Contest between rival unions in same trade, see
Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.
Inducing employer to discharge workman simply because he refuses to join union may be unlawful although employer has made agreement to employ only men not objectionable to union.
Berry v. *Donovan*, 188 Mass. 353, *ante*, page 76.
Right to exclude from union, see
Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.
Union rules and by-laws considered as an element in determining lawfulness of a strike.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.
The imposition by union under its rules of fines upon its members to induce them to leave the employ of one against whom the union is conducting a strike *held* to be unlawful intimidation.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, page 113.

UNFAIR LIST.

Placing name of employer on unfair list, enjoined.

Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

Declaring the plaintiff to be "unfair" because he continued to furnish supplies to a building contractor declared by a union to be "unfair" may be enjoined.

Burnham v. *Dowd*, 217 Mass. 351, *ante*, page 159.

UNLAWFUL INTERFERENCE.

It is unlawful to threaten a general strike of all workmen engaged upon a building under construction in order to compel the owner to force one of the contractors to yield in a dispute with his employees by breaking or threatening to break his contract with him.

Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

Such action will be enjoined.

Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

And if the owner in consequence of such action threatens to break such a contract he also may be enjoined from so doing.

Aberthaw Construction Co. v. *Cameron*, 194 Mass. 208, *ante*, page 94.

Interference with the contractual relation of the employer and his employees by the action of strikers amounts to unlawful interference with the employer's business.

Folsom v. *Lewis*, 208 Mass. 336, *ante*, page 141.

The performance of a contract providing that the employer shall only hire union men whenever such men are available, if entered into freely and fairly for the mutual benefit of the contracting parties without any intention of injury or coercion, will not be enjoined in a suit in equity.

Hoban v. *Dempsey*, 217 Mass. 166, *ante*, page 155.

Placing a business man's name on the "unfair" list by a labor union may, under certain circumstances, be an unlawful interference with his business and may be enjoined.

Burnham v. *Dowd*, 217 Mass. 351, *ante*, page 159.

With rights under formal contract to work or hire for a fixed time.

Any interference by persuasion or coercion designed to bring about breach of a formal contract to work or employ for a fixed time is unlawful.

Walker v. *Cronin*, 107 Mass. 555, *ante*, page 36.

Beekman v. *Marsters*, 195 Mass. 205, *ante*, page 98.

With right to employ or be employed.

Intentional interference with right to employ or to be employed is unlawful, unless it can be justified as lawful competition.

Walker v. *Cronin*, 107 Mass. 555, *ante*, page 36.

Berry v. *Donovan*, 188 Mass. 353, *ante*, page 76.

Such interference by the use of force, threats, or other intimidation is unlawful.

Sherry v. *Perkins*, 147 Mass. 212, *ante*, page 42.

Vegelahn v. *Guntner*, 167 Mass. 92, *ante*, page 49.

It is not a justification for such interference that its object is to strengthen the union by compelling the persons whose employment is interfered with to join it, for that is not within the bounds of lawful competition.

Plant v. *Woods*, 176 Mass. 492, *ante*, page 60.

See also references below.

With right to be free in carrying on one's business.

Combination of workmen to compel employer to pay to them a "fine" which he is under no legal liability to pay by threatening or instituting a strike is an unlawful interference with his rights.

Carew v. *Rutherford*, 106 Mass. 1, *ante*, page 30.

Interference with one's business by combining to agree not to trade with him under penalty of heavy fines is unlawful by reason of the means used to make it effective.

Martell v. *White*, 185 Mass. 255, *ante*, page 71.

A strike in the nature of a sympathetic strike is not to be justified upon the ground of trade competition.

Pickett v. *Walsh*, 192 Mass. 572, *ante*, page 82.

A combination to compel by a strike the establishment and maintenance of a "closed shop," is unlawful.

Reynolds v. *Davis*, 198 Mass. 294, *ante*, page 103.

APPENDIX B.

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APPENDIX C.

STATUTES RELATIVE TO LABOR DISPUTES IN MASSACHUSETTS.

STRIKES AND LOCKOUTS.

MAYOR OR SELECTMEN TO GIVE NOTICE OF STRIKE. — A mayor of a city or the selectmen of a town, having knowledge that a strike or lockout such as is described in this act is seriously threatened or actually occurs in such city or town, shall at once give notice to the state board [of conciliation and arbitration]. Notice may be given by the employer or by the employees concerned in the controversy, strike or lockout. . . . [*Acts, 1909, c. 514, § 11, as am. by Acts, 1914, c. 681, §1.*]

STATE BOARD TO ACT ON NOTICE OF STRIKE. — . . . When the state board has knowledge that a strike or lockout, which involves an employer and his present or former employees, is seriously threatened or has actually occurred, and such employer at that time is employing, or upon the occurrence of the strike or lockout, was employing not less than twenty-five persons in the same general line of business in any city or town in the commonwealth, the state board shall, as soon as may be, communicate with such employer and employees and endeavor by mediation to obtain an amicable settlement, or endeavor to persuade them to submit the controversy to a local board of conciliation and arbitration or to the state board. . . . [*Acts, 1909, c. 514, § 11, as am. by Acts, 1914, c. 681, § 1.*]

WHEN PARTIES TO STRIKE REFUSE TO ARBITRATE. — . . . If a settlement is not agreed upon and the parties refuse to submit the matter in dispute to arbitration, the state board shall investigate the cause of such controversy and ascertain which of the parties thereto is mainly responsible or blameworthy for the existence or continuance of the same, and shall, unless a settlement of the controversy is reached, make and publish a report finding such cause and assigning such responsibility or blame. The state board may employ agents to assist in the said investigation. Said board shall, upon the request of the governor, investigate and report upon a controversy if in his opinion it seriously affects or threatens seriously to affect the public welfare. The state board shall have the same powers for the foregoing purpose as are given to it by the provisions of [§§ 12, 13, 14, and 15, of this act]. . . . [*Acts, 1909, c. 514, § 11, as am. by Acts, 1914, c. 681, § 1.*]

EMPLOYERS AND EMPLOYEES TO GIVE NOTICE TO STATE BOARD. — . . . The state board shall by publication or otherwise inform employers and employees of their duty to give notice to the state board before resorting to a strike or lockout and of the provisions of this act affecting the rights of employers and employees relative to industrial disputes. [*Acts, 1909, c. 514, § 11, as am. by Acts, 1914, c. 681, § 1.*]

LOCAL BOARDS OF CONCILIATION AND ARBITRATION. — The parties to any controversy such as is described in section thirteen of this act [see page 252] may submit the controversy in writing to a local board of conciliation and arbitration which may be composed either of three members mutually agreed upon, or of a member designated by the employer, a member chosen by the employees, or their duly authorized representative, and a third, who shall be chairman, chosen by those two. Such board shall have and exercise, relative to matters referred to it, all the powers of the state board, and its decision shall have such binding effect as may be agreed upon by the parties to the controversy in the written submission. Such board shall have exclusive jurisdiction of the controversy submitted to it, but it may ask the advice and assistance of the state board. The decision of such board shall be rendered within ten days after the close of any hearing held by it, and shall forthwith be filed with the clerk of the city or town in which the controversy arose, and a copy thereof shall be forwarded by said clerk to the state board. Each of such arbitrators shall be entitled to receive from the treasury of the city or town in which the controversy submitted arose, with the approval in writing, of the mayor of the city or the select-

men of the town, the sum of three dollars for each day of actual service, not exceeding ten dollars for any one arbitration. [*Acts, 1909, c. 514, § 16, as am. by Acts, 1914, c. 681, § 2.*]

Arbitration. — If a controversy which does not involve questions which may be the subject of an action at law or suit in equity exists between an employer, whether an individual, a partnership or corporation employing not less than twenty-five persons in the same general line of business, and his employees, the board shall, upon application as hereinafter provided, and as soon as practicable, visit the place where the controversy exists and make careful inquiry into its cause, and may, with the consent of the governor, conduct such inquiry beyond the limits of the commonwealth. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both to adjust said controversy, and make a written decision thereof which shall at once be made public, shall be open to public inspection and shall be recorded by the secretary of said board. A short statement thereof may, in the discretion of the board, be published in the annual report, and the board shall cause a copy thereof to be filed with the clerk of the city or town in which said business is carried on. Said decision shall, for six months, be binding upon the parties who join in said application, or until the expiration of sixty days after either party has given notice in writing to the other party and to the board of his intention not to be bound thereby. Such notice may be given to said employees by posting it in three conspicuous places in the shop or factory where they work. [*Acts, 1909, c. 514, § 12.*]

Application for arbitration. — Said application shall be signed by the employer or by a majority of his employees in the department of the business in which the controversy exists, or by their duly authorized agent, or by both parties, and if signed by an agent claiming to represent a majority of the employees, the board shall satisfy itself that he is duly authorized so to do; but the names of the employees giving the authority shall be kept secret. The application shall contain a concise statement of the existing controversy and a promise to continue in business or at work without any lockout or strike until the decision of the board, if made within three weeks after the date of filing the application. The secretary of the board shall forthwith, after such filing, cause public notice to be given of the time and place for a hearing on the application, unless both parties join in the application and present therewith a written request that no public notice be given. If such request is made, notice of the hearings shall be given to the parties in such manner as the board may order, and the board may give public notice thereof notwithstanding such request. If the petitioner or petitioners fail to perform the promise made in the application, the board shall proceed no further thereon without the written consent of the adverse party. [*Acts, 1909, c. 514, § 13.*]

Expert assistants may be appointed. — In all controversies between an employer and his employees in which application is made under the provisions of the preceding section, each party may, in writing, nominate fit persons to act in the case as expert assistants to the board and the board may appoint one from among the persons so nominated by each party. Said experts shall be skilled in and conversant with the business or trade concerning which the controversy exists, they shall be sworn by a member of the board to the faithful performance of their official duties and a record of their oath shall be made in the case. Said experts shall, if required, attend the sessions of the board, and shall, under direction of the board, obtain and report information concerning the wages paid and the methods and grades of work prevailing in establishments within the commonwealth similar to that in which the controversy exists, and they may submit to the board at any time before a final decision any facts, advice, arguments or suggestions which they may consider applicable to the case. No decision of said board shall be announced in a case in which said experts have acted without notice to them of a time and place for a final conference on the matters included in the proposed decision. Such experts shall receive from the commonwealth seven dollars each for every day of actual service and their necessary travelling expenses. The board may appoint such additional experts as it considers necessary, who shall be qualified in like manner and, under the direction of the board, shall perform like duties and be paid the same fees as the experts who are nominated by the parties. [*Acts, 1909, c. 514, § 14.*]

Advertisement for employees during strikes, etc. — If an employer, during the continuance of a strike among his employees, or during the continuance of a lockout or other labor trouble among his employees, publicly advertises in newspapers, or by posters or otherwise, for employees, or by himself or his agents solicits persons to work for him to fill the places of strikers, he shall plainly and explicitly mention in such advertisements or oral or written solicitations that a strike, lockout or other labor disturbance exists among his employees. [*Acts, 1910, c. 445, § 1, as am. by Acts, 1914, c. 347, § 1.*]

EMPLOYING PERSONS TO TAKE PLACES OF STRIKERS. — No employer, during the continuance of a strike, lockout or other labor trouble among his employees, shall directly or indirectly procure or attempt to procure persons to fill the places of employees involved in such strike, lockout or other labor trouble, if such persons are or have been solicited by means of advertisements or oral or written statements in which it has not been plainly and explicitly mentioned that a strike, lockout or other labor trouble exists in the establishment where such persons are to be employed. This provision shall apply whether such advertisements or oral or written solicitations were made within or without the commonwealth. [*Acts, 1910, c. 445, as last am. by Acts, 1914, c. 347, § 2.*]

PROCURING OF HELP DURING STRIKE FOR EMPLOYER WHOSE HELP IS ON STRIKE. — No person, firm, association or corporation, during the continuance of a strike, lockout or other labor trouble among the employees of another person, firm, association or corporation, shall procure, or attempt to procure, or assist in any way in procuring, or attempting to procure persons to work for such other person, firm, association, or corporation, to fill the places of employees involved in such strike, lockout or other labor trouble, if such persons are or have been solicited by advertisements or oral or written statements, whether made within or without the commonwealth, in which it has not been plainly and explicitly mentioned that a strike, lockout or other labor trouble exists in the establishment where such persons are to be employed. [*Acts, 1910, c. 445, as last am. by Acts, 1914, c. 347, § 3.*]

PENALTY. — Any person, firm, association or corporation violating any provision of this act shall, upon complaint of and after investigation by the state board of labor and industries, be punished by a fine not exceeding one hundred dollars for each offence. [*Acts, 1910, c. 445, as last am. by Acts, 1914, c. 347, § 4, Gen. Acts, 1915, c. 108, and by Gen. Acts, 1916, c. 143, § 1.*]

DETERMINATION OF THE NORMALITY OF BUSINESS AFTER A STRIKE. — The provisions of this act shall cease to be operative when the state board of conciliation and arbitration shall determine that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on in the normal and usual manner and to the normal and usual extent. Upon the application of the employer, this question shall be determined by said board, but only after a full hearing at which all persons involved shall be entitled to be heard and be represented by counsel. The board shall give at least three days' notice of the hearing to the strikers and employees by publication in at least three daily newspapers published in the commonwealth. [*Acts, 1910, c. 445, as last am. by Acts, 1914, c. 347, § 5, and by Gen. Acts, 1916, c. 89.*]

INJUNCTIONS.[1]

INJUNCTIONS NOT TO BE ISSUED AGAINST EMPLOYEES EXCEPT IN CERTAIN CASES. — It shall not be unlawful for persons employed or seeking employment to enter into any arrangements, agreements or combinations with the view of lessening the hours of labor or of increasing their wages or bettering their condition; and no restraining order or injunction shall be granted by any court of the commonwealth or by any judge thereof in any case between an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, or any act or acts done in pursuance thereof, unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application, for which there is no adequate remedy at law, and such property or property right shall be particularly described in the application, which shall be sworn to by the applicant or by his agent or attorney. [*Acts, 1914, c. 778, § 1.*]

PERSONAL RIGHTS. — In construing this act, the right to enter into the relation of employer and employee, to change that relation, and to assume and create a new relation for employer and employee, and to perform and carry on business in such relation with any person in any place, or to do work and labor as an employee, shall be held and construed to be a personal and not a property right. In all cases involving the violation of the contract of employment either by the employee or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted but the parties shall be left to their remedy at law. [*Acts, 1914, c. 778, § 2.*]

NO EMPLOYEE TO BE PUNISHED FOR ENTERING INTO ARRANGEMENT TO BETTER CONDITIONS. — No persons who are employed or seeking employment or other labor shall be indicted, prosecuted

[1] Acts, 1914, c. 778, under this heading, has been recently held unconstitutional. *See* the case of Bogni *v.* Perotti, *infra*, p. 185.

or tried in any court of the commonwealth for entering into any arrangement, agreement, or combination between themselves as such employees or laborers, made with a view of lessening the number of hours of labor or increasing their wages or bettering their condition, or for any act done in pursuance thereof, unless such act is in itself unlawful. [*Acts, 1914, c. 778, § 3.*]

Notice of preliminary injunction to be given. — No preliminary injunction shall be granted without notice to the opposite party. No temporary restraining order shall be granted without notice to the opposite party, unless it shall clearly appear from specific facts, shown by affidavit or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than ten days from the date of the order, and shall take precedence of all matters except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be filed forthwith in the clerk's office. The provisions of this act shall not apply to any proceedings in the probate courts. [*Acts, 1913, c. 515, § 1, as am. by Acts, 1913, c. 840.*]

Punishment for violation of injunctions. — The defendant in proceedings for violation of an injunction, where it appears from the petition filed in court alleging the violation, that the violation is an act which also would be a crime, shall have the right to trial by jury on the issue of fact only, as to whether he committed the acts alleged to constitute the said violation, and the said trial by jury shall take place forthwith, and if there is no sitting of a jury in the county where the contempt proceedings are to be heard, a venire shall issue to impanel a jury forthwith. [*Acts, 1911, c. 339, § 1.*]

Not to apply to probate courts. — The provisions of this act shall not apply to proceedings in the probate court. [*Acts, 1911, c. 339, § 2.*]

MISCELLANEOUS.

Intimidation of employees prohibited. — No person shall, by intimidation or force, prevent or seek to prevent a person from entering into or continuing in the employment of any person or corporation. [*Acts, 1909, c. 514, § 18.*]

Persons not to be punished criminally for attempt to persuade, etc. — No person shall be punished criminally, or held liable or answerable in any action at law or in equity, for persuading or attempting to persuade by printing or otherwise any other person to do anything, or to pursue any line of conduct not unlawful or actionable or in violation of any marital or other legal duty, unless such persuasion or attempt to persuade is accompanied by injury or threat of injury to the person, property, business or occupation of the person persuaded or attempted to be persuaded, or by disorder or other unlawful conduct on the part of the person persuading or attempting to persuade, or is a part of an unlawful or actionable conspiracy. [*Acts, 1913, c. 690.*]

Non-resident employees may be employed as special police officers. — If, in an emergency, special police officers are appointed under the name of police officers or any other name, to act as police officers for quelling a riot or disturbance or for protecting property no person shall be so appointed who is not a resident of this commonwealth unless he is a regular employee of the person or corporation whose property he is so appointed to protect. [*Acts, 1909, c. 514, § 34.*]

Police protection authorized and regulated. — A person or corporation may, at any time, if his or its property is in danger, call upon the regular police authorities in this commonwealth for assistance in its protection, and the provisions of this and the preceding section shall not limit or diminish such right; but no person or corporation shall request or authorize any person or body of persons not residents of this commonwealth, except regular employees, to assist such corporation with arms in the defence of its property, and no such request or authority shall justify an assault or attack with arms by a non-resident. Whoever, being an employer of labor, requests or authorizes assistance in violation of the provisions of this section and whoever renders such assistance with arms shall be severally liable in damages to each person injured in person or property thereby. [*Acts, 1909, c. 514, § 35.*]